

Nos. 12217-12221

**United States
Court of Appeals**

for the Ninth Circuit

No. 12217

SAMUEL HARRY KASINOWITZ, Appellant,

vs.

UNITED STATES OF AMERICA, Appellee.

and Consolidated Cases

No. 12221

LILLIAN ADELE DORAN, Appellant,

vs.

UNITED STATES OF AMERICA, Appellee.

and Consolidated Cases

Transcript of Record

In Four Volumes

VOLUME III.

(Pages 343 to 607, inclusive)

FILED

MAY 31 1949

**PAUL P. O'BRIEN, /
CLERK**

**Appeals from the United States District Court for the
Southern District of California, Central Division**

No. 12221

United States
Court of Appeals
for the Ninth Circuit

LILLIAN ADELE DORAN,
PHILLIP BOCK,
IRVING CARESS,
ROBERT BLAIR,
MERLE BRODSKY,
FRANK SPECTOR,

Appellants,

vs.

UNITED STATES OF AMERICA,

Appellee.

Transcript of Record

Appeal from the United States District Court
for the Southern District of California
Central Division

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in *italic*; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in *italic* the two words between which the omission seems to occur.]

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In the District Court of the United States in and
for the Southern District of California,
Central Division

Honorable Peirson M. Hall, Judge Presiding:

No. 8796-PH

In Re: LILLIAN ADELE DORAN.

Nos. 8826, 8827, 8828, 8829, 8830-PH

In Re: FRANK EDWARD ALEXANDER,
PHILIP BOCK, BEN DOBBS, SAMUEL
HARRY KASINOWITZ, HENRY STEIN-
BERG.

REPORTER'S TRANSCRIPT OF
PROCEEDINGS

Los Angeles, Calif., November 4, 1948

Appearances: For the Government: James M. Carter, United States Attorney, Los Angeles 12, California; and Arline Martin, Assistant United States Attorney; and Max H. Goldscheim, Special Assistant to Attorney General, Washington, D. C. [1*] For the Respondents: Gallagher, Margolis, McTernan & Tyre, 112 West Ninth Street, Los Angeles 15, California; by Ben Margolis, Esq.; and John T. McTernan, Esq. [2]

* * * *

The Court: Yes, 11:00 o'clock.

It appears to be a challenge to the grand jury and motion to quash subpoena to appear before the

grand jury in the District Court of the United States, for the Southern District of California. It is signed by Gallagher, Margolis, McTernan & Tyre, by John T. McTernan, and appears to be made on behalf of Frank Edward Alexander, Philip Bock, Ben Dobbs, Samuel Harry Kasinowitz and Henry Steinberg.

Mr. McTernan: Yes, your Honor.

The Court: I have read it. I just read it in chambers.

Mr. McTernan: This motion, if the court please, is made on behalf of the five persons whom you have named, whom you will recall are five of the ten persons who were before your Honor a week ago Monday on charges of contempt, or refusal to answer questions before the grand jury, and whom your Honor sentenced to be committed in the custody of the United States Marshal until such time as they answer, and who were released yesterday pursuant to an order and a mandate, the mandate was spread on the records of this court yesterday, and the order was issued, as you will recall, by Honorable William Denman, Circuit Judge of the United States Court of Appeals for the [6] Ninth Circuit.

Now as these five people, your Honor, stepped from the release cell of the county jail yesterday they were handed subpoenas by the United States Marshal requiring them to appeal before the grand jury forthwith and instant.

They appeared, they informed me that they were asked certain questions, and then were told to re-

turn here to the grand jury at 11:00 o'clock this morning.

This is our first opportunity, if the court please, to make this motion, and we make it at this time.

Now the first three grounds of the challenge to the grand jury and the first two grounds of the motion to quash are identical with those which have heretofore been urged to your Honor in connection with the first subpoenas that were served upon these witnesses and since this matter was fully presented to your Honor I will not argue those questions at length here.

The Court: You wish to adopt, however, your argument?

Mr. McTernan: I would like to adopt our record, if the court please, in order to save time. Could it be deemed that at this point the entire record which was made in connection with our motion to quash be included?

The Court: So ordered.

Mr. McTernan: So the record will be clear, that was the record made on October 25, 1948. [7]

The Court: In connection with the identical motion.

Mr. McTernan: The motion is identical on those first three points, your Honor. [8]

* * * *

The challenge and the motion are denied.

Mr. Carter: Will the witnesses be ordered to report? [13]

The Court: Are they here?

Mr. Carter: I think so.

JOHN S. MURDOCK

called as a witness by and in behalf of the government, having been first duly sworn, was examined and testified as follows:

The Clerk: Will you state your name.

The Witness: John S. Murdock; M-u-r-d-o-c-k.

The Clerk: Your address? [16]

The Witness: 106 West Third Street, Los Angeles.

The Clerk: Take the stand.

Direct Examination

By Mr. Goldschein:

Q. You are John S. Murdock?

A. Yes, sir.

Q. On October 27, 1948, were you the official grand jury reporter? A. Yes, sir.

Q. Did you take down in shorthand the questions asked the witness before the grand jury and the answers given by that witness? A. Yes, sir.

Q. Did you transcribe accurately the notes you took? A. Yes, sir.

Mr. Goldschein: Will you mark this for identification, please.

The Clerk: Exhibit No. 1 for the government.

(The document referred to was marked Government's Exhibit No. 1 for identification.)

* * * *

[17]

By Mr. Goldschein:

Q. Mr. Murdock, will you examine government's Exhibit 1 for identification and tell us whether or not that is the testimony of the witness Mrs. Lillian Doran as you took it down and transcribed it?

(Testimony of John S. Murdock.)

A. Yes.

Q. As you took it down in the grand jury room and transcribed it? A. It is.

Mr. Goldschein: I would like to read into the record for the purpose of having the court hear the testimony of Mrs. Doran, the questions she was asked and the answers she gave.

The Court: Do you want the witness to read it?

Mr. Goldschein: Yes. Will you please read it?

The Witness: "Lillian Adele Doran, called as a witness before the grand jury, having been first [19] duly sworn by the Foreman, was examined and testified as follows:

"Examination

"By Mr. Goldschein:

"Q. Your name is Mrs. Lillian Adele Doran?

"A. Yes.

"Q. Are you known by any other name, Mrs. Doran? "A. No.

"Q. At the outset, let me tell you that this grand jury is not investigating you. You are simply called here as a witness to give what evidence you have that the grand jury may be interested in. Do you understand my statement? "A. Yes.

"Q. Mrs. Doran, do you know the names of the officials of the Los Angeles County Communist Party?

"A. I refuse to answer that question on the ground it might incriminate me.

"Q. Do you know the organizational setup of the Los Angeles County Communist Party?

(Testimony of John S. Murdock.)

"A. I refuse to answer that question on the grounds it may incriminate me.

"Q. Do you know Mr. Ned Sparks? [20]

"A. I refuse to answer that question on the grounds it may incriminate me.

"Q. What is your occupation?

"A. Housewife.

"Q. Do you have any occupation other than that?

"A. I refuse to answer that question on the grounds it may incriminate me.

"Q. What is your husband's first name?

"A. Norman.

"Q. Norman Doran? "A. Yes.

"Q. What is his occupation?

"A. He is an electrician.

"Q. Electrician? "A. Yes.

"Q. Who is he employed by?

"A. He is employed by various contractors. I really don't know which ones.

"Q. You don't know what contractors he is employed by at the present time?

"A. Not at the present time.

"Q. Your home address is what?

"A. 1513 West 110th Place.

"Q. Do you understand the term 'incriminate'?

"A. Yes.

"Q. You think, then, or you believe that the answer that you may give to the questions I just asked you which you refused to answer would involve or may involve you in the commission of a crime against the United States government?

"A. I understand the term.

(Testimony of John S. Murdock.)

“Q. You still think that the answer would involve you in the commission of a crime against the United States government?

“A. I understand what the term incriminate means.

“Q. Well, now, will you please answer my last question? “A. Can I see my attorney?

“Q. Do you know what the question is?

“A. Yes.

“Q. Will you repeat the question to me, please?

“A. Do I feel that the answering of these questions would constitute a crime against the government.

“Q. Would involve you in the commission of a crime against the government. “A. Yes.

“Q. Do you want to see your attorney about that?

“A. Yes.

“Q. He is right outside, isn't he?

“A. Yes.

“Q. You will be right back, won't you?

“A. Yes.

“(Short recess taken.)

“The Witness: That is still my complete answer. I refuse to answer on the grounds that it might incriminate me.

“Q. By Mr. Goldschein: Mrs. Doran, we will recess you to reappear before this grand jury at 2:00 o'clock on next Wednesday. Do you understand that?

“A. Yes. All right.”

That is all.

* * * *

FRANCES L. DUFFY

called as a witness by and in behalf of the government, having been first duly sworn, was examined and testified as follows:

* * * *

[24]

Direct Examination

By Mr. Goldschein:

Q. Your name is Frances L. Duffy, is it not?

A. Yes, sir.

Q. Miss Duffy, on November 3, 1948, you were the official court reporter before the grand jury, were you?

A. I was.

Q. And you made shorthand notes of all the questions asked the witnesses and the answers given by them?

A. I did.

Q. Now, Miss Duffy, did you take down in shorthand the questions asked of Mrs. Lillian Doran?

A. Yes, sir.

Q. Will you read the questions propounded to her and the answers she gave?

A. "By Mr. Goldschein:

"Q. Mrs. Doran, you were advised, when you were here before, that this grand jury was not investigating you. Do you recall that?

"A. I don't exactly recall it; no.

"Q. All right, let me repeat it to you so that you will be advised: This grand jury is not investigating you. Now, we are making an investigation with reference to some Federal employees who made a false statement to a Federal agency with [25] reference to their affiliation with certain organizations or clubs or groups of people.

(Testimony of Frances L. Duffy.)

“Now, you understand what I mean by that?”

“A. I understand what you just told me, yes.

“Q. That is right. Now, are you employed by the Federal government? “A. No, I am not.

“Q. Have you ever been employed by the Federal government? “A. No.

“Q. Now, to the best of your recollection, are you personally acquainted with any employees of the Federal government? “A. I don’t recall any.

“Q. Ma’am? “A. I don’t recall any.

“By Mr. Carter:

“Q. By that you mean you don’t know any at this time, or don’t recall any?

“A. Not that I can recall.

“By Mr. Goldschein:

“Q. Do you recall any of the names of your friends or acquaintances that are employees of the Federal government? “A. No. [26]

“By Mr. Kinnison:

“Q. Will you speak up so the reporter can get this?

“A. Okay. At the time, right now, in my immediate circle of acquaintances, I don’t recall anyone that works for the Federal government.

“By Mr. Goldschein:

“Q. Now, do you know Dorothy Healey?

“A. My answer still stands. I refuse to answer on the grounds that it may incriminate me.

“Q. Do you know her business or home address?

“A. I refuse to answer on the grounds it may incriminate me.

“Q. Do you know her occupation?

(Testimony of Frances L. Duffy.)

“A. My answer still stands. I refuse to answer on the grounds it may incriminate me.

“Q. Do you know where she can be located?

“A. I refuse to answer on the grounds that it may incriminate me.

“Q. Do you know whether Dorothy Healey is married?

“A. I refuse to answer on the grounds that it may incriminate me.

“Q. Do you know her husband’s name? [27]

“A. I refuse to answer on the grounds that it may incriminate me.

“Q. Do you know what his occupation is?

“A. I refuse to answer on the grounds that it may incriminate me.

“Q. Now, if you do know it, will you tell us what his occupation is?

“A. My answer still stands. I refuse to answer on the grounds it may incriminate me.

“By Mr. Carter:

“Q. Mr. Goldschein explained to you, I think, on the occasion that you were here before, what was meant by the word ‘incriminate’, did he not? Do you have in mind that discussion?

“A. As I recall, Mr. Goldschein asked me if I understood the term ‘incriminate myself’.

“Q. You understand that the privilege against self-incrimination only applies to such things as might incriminate you, and not things that might incriminate some friend or acquaintance of yours, do you not?

“A. I understand the term ‘incriminate’.

(Testimony of Frances L. Duffy.)

“Q. You understand it is a privilege that concerns only you, and doesn’t apply to anything that might incriminate a friend or acquaintance? [28]

“A. I still stand on my answer.

“By Mr. Goldschein:

“Q. Do you understand the statement Mr. Carter made to you? The privilege against self-incrimination applies to you alone, if you feel that you may become involved in a crime against the Federal government. However, it does not apply if you are fearful that some friend of yours may become involved in a crime, and not you. Do you understand that? “A. Yes.

“Q. And you still refuse to answer?

“A. Yes.

“By Mr. Carter:

“Q. You understand, also, do you not, that, although you as a witness may claim your privilege or refuse to answer, you do not ultimately decide whether you have that privilege? “A. Yes.

“Q. But that some judge decides whether your claim of privilege is well founded?

“A. Yes, I understand that.

“Q. And you still stand on your refusal and refuse to answer those questions? “A. Yes.

“Mr. Goldschein: All right, will you wait in the anteroom, please.”

* * * *

[30]

Mr. Goldschein: That is all with reference to the witnesses.

We respectfully request that the court give the witnesses an opportunity to explain to the court pri-

vately in chambers any matters that the witness may feel would tend to show that the answer to the question would tend to incriminate her for the violation of a Federal offense.

The Court: If the witness desires it, she may.

Mr. Margolis: We would like to go ahead. We have some motions to make, your Honor.

The Court: Does the witness desire——

Mr. Margolis: Before we take up that matter, we have some other matters. In due course we will present our case, your Honor, and we do not think it is up to the government——

The Court: What is your motion, Mr. Goldschein?

Mr. Goldschein: We move that the witness be instructed that she must answer the question because on the face of the question we can't possibly conceive how the answer would tend to incriminate the witness of a Federal offense.

* * * *

The Court: You initiated the proceedings. It was your motion to quash, as I remember, that started these proceedings, was it not?

Mr. Margolis: We initiated them? The proceedings were initiated by the subpoena ordering these people before the grand jury. We didn't say, "Come and serve us with a subpoena so we can make a motion to quash."

The Court: But you initiated the proceedings before the court. The fact remains that I have endeavored to give you prompt hearings in connec-

tion with your matters. I have heard you as fully as you wanted to be heard.

* * * *

The Court: There was no stay of the grand jury proceedings, there was no order of any court dissolving the grand jury, there is no writ of prohibition prohibiting this court from considering the matter, no injunction or restraining order issued against the United States Attorney from doing what he considered to be his duty, or the Attorney General, and the grand jury have the right to inquire, if they chose to inquire yesterday. That is their business.

* * * *

Mr. McTernan: If the court please, the first matter which we would raise in this proceeding is the challenge to the grand jury. Now, perhaps we can save some time here, your Honor, by incorporating the record that was made on October 25th in connection with the other witnesses.

The Court: If you desire, unless there is some objection to that. Is there, Mr. Goldschein?

Mr. Goldschein: No, sir.

The Court: Then I will make an order to the effect that all evidentiary and other matters and things offered on behalf of any of the witnesses in connection with the previous [49] proceedings and objection to the motion of the government for an order directing them to answer the question be and are now incorporated in evidence and a part of the record in this case to the same force and effect as if they were again offered here in haec verba.

Mr. McTernan: Thank you.

In order that your Honor's reference be complete may I read the title and number of the cases there involved?

The Court: Very well.

Mr. McTernan: In re Ben Dobbs, Philip Bock, Delphine Murphy Smith, Frank Edward Alexander, Miriam Brooks Sherman, Samuel Harry Kasinowitz, Mrs. Dorothy Baskin Forest, Mrs. Charles Holister Noble and Wesley Bissey, Nos. 8786-PH to and including 8795-PH.

The Court: Consolidated.

* * * *

[50]

Mr. McTernan: Now, your Honor, in connection with the claim of self-incrimination—and I would like the record to specifically include certain matters that were involved in this other record so there may be some repetition but I think it is important for this record—you will recall that I believe it was defense Exhibit A in the Dobbs record, to which your Honor just referred, there was a copy of an indictment returned by the grand jury for the Southern District of New York charging 12 persons, William Z. Foster, et al., with a conspiracy to violate the Smith Act, 18 USCA, Section 10, and that witnesses' exhibit—whatever the proper designation was—was a copy of an indictment returned by the grand jury for the Southern District of New York against an individual defendant—I think his name was William Z. Foster but I am not sure—in any event it was stipulated that the individual indictments against the 12 persons were identical in language

except for the name of the defendant. We would like that those exhibits be deemed also a part of this record.

The Court: Everything that was in the other record.

Mr. Goldschein: And the objection of the government to the introduction of those also should be included.

The Court: Very well. All objections, all offers, all matters, things and exhibits. I do not know of a broader word than "things". [51]

Mr. McTernan: We agree that "things" is meant to be all-inclusive.

The Court: Everything.

* * * *

[52]

I take it the government will stipulate that the indictment has not been dismissed by the government and is still pending?

Mr. Goldschein: Yes.

The Court: Without waiving your objection as to its materiality?

Mr. Goldschein: That is right.

The Court: Very well.

Mr. McTernan: At this time, your Honor, I will make a short offer of proof so that our record will be complete.

We offer to prove, if we are given an opportunity, that motions to dismiss were filed against both the conspiracy indictment and the individual indictments attacking the legal sufficiency of those indictments, and that those motions to dismiss have been denied by a judge of the United States District [54] Court for the Southern District of New York.

We further offer to prove that the trial on the conspiracy indictment is now set for November 15, 1948.

Mr. Goldschein: We are objecting, may it please the court, as previously.

The Court: It is immaterial. Objection sustained.
* * * *

Mr. McTernan: Yes, your Honor.

Let us go back to semantics for a moment, your Honor.

The order which you entered just before the recess incorporated all matters and all things dealing with all objections [55] and all motions and any other defense that was raised to the question involved in the proceedings on October 25th.

The Court: That is right.

Mr. McTernan: And it was not limited simply to the grand jury challenge.

The Court: That is correct.

* * * *

[56]

JAMES M. CARTER

called as a witness by and in behalf of the respondents, having been first duly sworn, was examined and testified as follows:

The Clerk: State your name, sir.

The Witness: James M. Carter.

Direct Examination

By Mr. McTernan:

Q. Are you the United States Attorney for this district, Mr. Carter?

A. I am.

Q. You have been engaged, have you not, in

(Testimony of James M. Carter.)

presenting matters to the same Grand Jury in connection with the proceedings of which Mrs. Doran was called as a witness?

A. Other matters, you say?

Q. No. I will reframe my question.

You have been engaged, have you not, in presenting the matters to the Grand Jury in connection with which Mrs. Doran was called as a witness?

A. I have.

Q. And you were in the Grand Jury room when Mrs. Doran was called to testify, were you not?

A. I was. [57]

Q. Mr. Carter, you have information, do you not, that Mr. Ned Sparks is an official of the Communist Party?

Mr. Goldschein: We object to that, may it please the Court. The Grand Jury is investigating that matter.

Mr. Carter: I would like to add to that objection, objected to upon the further ground that the information I may have in my possession is of a confidential nature and as an employee of the government I am not required to disclose that information publicly.

* * * *

Mr. Carter: You are asking me, as I understand you—[58] if I may now step out of my role as witness into my role as counsel—you are asking me if I have information in my capacity as United States Attorney that Mr. Ned Sparks is a member of the Communist Party.

(Testimony of James M. Carter.)

Mr. McTernan: I did not ask you in what capacity you obtained the information, Mr. Carter.

Mr. Carter: I will answer your question in my private capacity.

The Court: Just a moment. It is difficult to keep the record straight here.

Just from the foundation laid of it by counsel he asked you if you were the United States Attorney and he is asking you now in that capacity, I take it.

Mr. Carter: In that capacity we make the objection, your Honor, that information I have in connection with cases in my office comes from various sources, including confidential reports of the FBI, including information from people who call or write my office—a lot of confidential information.

The Court: I think the objection is good. I do not think in a proceeding where a Grand Jury is investigating, that is a grand inquisition, that the prosecutor can be called down and compelled by an objection on the part of a witness to disclose any sources of information that he may have concerning a subject matter which apparently is under [59] investigation.

Mr. McTernan: Your Honor, let me make myself clear. I don't want to know the sources of his information.

The Court: You were just asking what his information was.

Mr. McTernan: I only want an answer to this

(Testimony of James M. Carter.)

one question. All I want to know is whether he has information as to the official position of Ned Sparks in the Communist Party.

Mr. Goldschein: And that is what we are objecting to, your Honor.

The Court: The objection is sustained.

* * * *

Mr. McTernan: We offer to establish through this witness, your Honor, if permitted to ask a question, that he knows that Ned Sparks is an officer of the Communist Party, and situated in Los Angeles [62]

* * * *

Mr. McTernan: May I add to that, and that is the reason why the question was put to Mrs. Doran substantially "Do you know Ned Sparks?"

Mr. Goldschein: We are objecting to any offer of proof on that question, may it please the Court. Mr. Carter is now a witness of Mr. McTernan's and certainly Mr. McTernan can't impeach his own witness.

The Court: It is immaterial what the District Attorney knows. The Grand Jury is inquiring. The offer of proof is denied. The objection to it is sustained.

By Mr. McTernan:

Q. Mr. Carter, you, in your private capacity, have read in the newspapers in Los Angeles that Ned Sparks is an [63] officer of the Communist Party, have you not?

(Testimony of James M. Carter.)

Mr. Goldschein: We are objecting to that, may it please the Court, as being immaterial.

The Court: Objection sustained.

* * * *

Mr. McTernan: We offer to prove through this witness, your Honor, that he has learned through newspaper reading that Ned Sparks is an officer of the Communist Party and situated in Los Angeles.

The Court: It is immaterial what he knows, what he has learned, what he has read, so far as the inquiry is concerned. The inquiry is by the Grand Jury.

By Mr. McTernan:

Q. You have information, do you not, that Dorothy Healey is an officer of the Communist Party? [64]

Mr. Goldschein: Same objection.

The Court: Same ruling.

By Mr. McTernan:

Q. You have information, have you not, that Dorothy Healey is an officer of the Communist Party and is situated in Los Angeles?

Mr. Goldschein: Same objection.

The Court: Same ruling.

Mr. McTernan: We offer to prove through the testimony of this witness, if we are permitted to ask the questions, that this witness has information that Dorothy Healey is an officer in the Communist Party which is situated in Los Angeles. That is the reason why the question "Do you know Dorothy

(Testimony of James M. Carter.)

Healey'' was propounded to the witness Mrs. Doran before the Grand Jury.

Mr. Goldschein: Same objection.

The Court: Same ruling.

By Mr. McTernan:

Q. Now, Mr. Carter, you have read in the newspapers in Los Angeles that Dorothy Healey is an officer of the Communist Party, have you not?

Mr. Goldschein: Objected to as immaterial and incompetent.

The Court: Objection sustained.

Mr. McTernan: We now offer to prove, your Honor, if permitted [65] to ask—I will withdraw that and ask another question.

Q. You know from sources completely unconnected with your capacity in the Department of Justice, do you not, that Dorothy Healey is an officer of the Communist Party?

Mr. Goldschein: I object to that question on the same grounds.

The Court: Same ruling; objection sustained. It is immaterial what he knows, whether he knows it privately or officially or in any other way.

Mr. McTernan: I want to establish if I can through this witness that Dorothy Healey is an officer of the Communist Party, and I want to establish that in connection with the fear of incrimination by Mrs. Doran.

The Court: It is immaterial what this witness knows. The inquiry is by the Grand Jury.

Mr. McTernan: I can prove that fact through

(Testimony of James M. Carter.)

any witness I choose to call, if your Honor please, and this is a witness I choose to call. I am not asking him anything now about his official knowledge.

The Court: The objection is sustained.

Mr. McTernan: We offer to prove through this witness, if we are permitted to ask the question, that Dorothy Healey is an officer of the Communist Party, that she is situated in Los Angeles, and we offer to prove this in connection with [66] the witness' claim of the privilege against self-incrimination with respect to the following questions which were put to her before the Grand Jury on November 3, 1948—and I am reading from my notes; I will give them as correctly as I can—do you know Dorothy Healey? Do you know her business or home address? Do you know her occupation? Do you know where she can be located? Is she married? What is her husband's name? Do you know the occupation of her husband? If you do know it, what is it?

That completes my offer, your Honor.

Mr. Goldscheine: I object to all those questions as being immaterial and incompetent.

The Court: Objection sustained.

* * * *

By Mr. McTernan:

Q. Is Ned Sparks an officer of the Communist Party?

Mr. Goldscheine: We are objecting to that, may it please the Court. That has been gone over and over again.

(Testimony of James M. Carter.)

The Court: What is the ground of your objection?

Mr. Goldschein: This is a matter under investigation by [67] Grand Jury. He tried to develop that. It is immaterial what Mr. Carter knows.

Mr. Carter: Let me make the objection broader. Also upon the ground that as an official of the Department of Justice, information that I have is privileged and when Mr. Goldschein in the past has stated "same objection" I think the record should show that that means the various objections we made, including the objection to divulging information I may have as an officer of the Department of Justice.

The Court: The objection is sustained.

By Mr. McTernan:

Q. Mr. Carter, when I ask you this question I am not asking you for any information which you may have as the result of your position with the Department of Justice. Is Ned Sparks an official of the Communist Party?

Mr. Goldschein: May it please the Court, we have gone over that before.

The Court: It has just been asked and answered.

Mr. McTernan: I didn't know the ground of your Honor's ruling.

The Court: All the grounds that were assigned in addition to the ground that it was immaterial.

(Testimony of James M. Carter.)

The Court: Yes, that is right. Do you know Ned Sparks?

Except for the one question, do you have any occupation other than that, all these are "do you know."

Now as I tried to make plain the other day in the various hearings that we have had, I cannot see how a person can be incriminated by knowing Dorothy Healey, Ned Sparks, Dorothy Healey's home address, business address, occupation, located where, married, husband's name or occupation, and so forth. In other words, I thought I made it clear that my position on it is that it is not a crime to know.

Mr. McTernan: Perhaps I haven't sufficiently stated our position, your Honor, and I might be able to assist the court if I made a restatement at this time.

The Court: You may restate it but I think it has been stated quite a few times and I think that I understand it.

Mr. McTernan: If you will permit me to take just a moment so there won't be any misunderstanding.

The Court: Very well.

Mr. McTernan: We are trying to prove through this witness that Ned Sparks and Dorothy Healey are officials of the Communist Party here in Los Angeles. It is our position that if the answer of this witness might show that she knows Ned Sparks, that she knows Dorothy Healey, or that she knows

(Testimony of James M. Carter.)

these details about Dorothy Healey's private life, which could be a link in tying her in with the Communist Party because this witness wouldn't know, one way in which this witness might know these people and know these details about them, is the fact that she is a member of the Communist Party, and then if she gave this answer this would be a link to tie her in with the Communist Party, and because they indict people now because they are members of the Communist Party she [70] would be subject to prosecution under Section 10 of the Smith Act. I am not sure if it is Section 10, but it is the Smith Act, 18 USCA Section 10.

So as part of our defense, if it may be called that, to this motion we are seeking to show that these two people are officials of the Communist Party as a foundation stone, as it were, to proving the rest of our defense, which I have just spelled out to you.

The Court: That was the position which I understood you had taken before and have consistently taken since the proceedings on the various witnesses began.

Mr. McTernan: Yes.

The Court: And I had so understood it, and I had that understanding of it in making my rulings that it is immaterial.

* * * * [71]

Your Honor, before proceeding with the next step we are going to ask that the witness be permitted to make a statement to your Honor under

the same conditions and terms as such statements were previously made. I understand your Honor will entertain that kind of a statement.

The Court: Yes, if the witness desires it.

Mr. Margolis: Before proceeding to that, however, your Honor, we have some other matters to offer.

* * * *

Mr. Goldschein: We will agree, may it please you Honor, that these are newspaper clippings, that is all.

Mr. Margolis: On the dates that they purport to bear?

Mr. Goldschein: As to the dates.

However, we do not agree as to their materiality. We insist, may it please the Court, that they are immaterial in this case, that there is no showing here that the witness has anything to fear from the stories that appear in the newspapers.

The Court: He has not offered them yet. In other words, what the government has done is waived foundation.

Mr. Goldschein: That is right.

Mr. Margolis: Your Honor please, as the witness' exhibit next in order we would like to offer this clipping.

The Court: That will be Exhibit 1. These are separate proceedings.

Mr. Margolis: I see. Then the incorporation of others by reference doesn't give those exhibit numbers the same exhibit numbers here, I guess. That is the only question I had in mind.

The Court: How many exhibits have we had?

The Clerk: A and B. [74]

Mr. Margolis: My thought was we should reserve A and B for the others, if that is all there were. This would be C then.

The Court: This will be C.

Mr. Margolis: I would like to offer this then as the witness' Exhibit C, your Honor, a portion of a page of the Los Angeles Examiner for July 21, 1948, and particularly that portion of it which appears at the left-hand side of the front page with the heading, "Seven Arrests; Charge Plot Against Government," which is a double column and continues to the bottom of the page with the notation "(Continued on Page 2, Column 6)," and which goes over on the back side of the same page, which is page 2, to column 6 and continues on into column 7, and particular to that portion of the article reading as follows—before reading it I might state what the article is generally about because otherwise it would have no meaning.

The article refers to the arrest of and the indictment against what the newspaper article refers to as the "ranking leaders of the (Communist) Party," and in what the newspaper says is "in the greatest crackdown on Communists in the nation's history."

Mr. Goldscheine: Excuse me.

May it please the Court, I think it would take less time, and since time is important here, if the Court would read it and let them be made an ex-

hibit and filed as an exhibit in the [75] record. It will take less time.

Mr. Margolis: I ask leave to present the matter in this fashion because it is a long article and I want to indicate the part which I think is most material and the reasons for its materiality.

We are particularly interested in the portion on page 2 reading as follows—

The Court: Counsel, I think you should make your offer and if government counsel has any objection then he can state it. But what you are doing is reading it into the record.

Mr. Margolis: I am particularly offering this particular language, your Honor, and an offer is often made by being read into the record. I want the particular language indicated and directed to your Honor's attention. It is only two paragraphs long. I could have read it three times by now.

The Court: So could I.

Mr. Margolis: But the point is, it is a part of a much larger article. That portion reads:

“Local Federal attorneys indicate that the indictment and arrest of Foster may be the forerunner of a possible nation wide roundup of all American Communist Party members, or persons known to be associated in Communist activities.

“Conviction under the Smith Act carries with it maximum punishment of 10 years in prison and a [76] fine of \$10,000 on each count.”

I offer this as indicated, your Honor.

The Clerk: Exhibit C.

(The document referred to was marked Respondents' Exhibit C for identification.)

The Court: You offer it in evidence?

Mr. Margolis: I offer it in evidence.

Mr. Goldschein: We are objecting to it, may it please the Court, as being immaterial and incompetent in these proceedings. It is hearsay.

Mr. Margolis: Your Honor, I was wondering which counsel was handling the matter.

Mr. Goldschein: You are: I will let you finish. Go right ahead.

Mr. Margolis: Go ahead, counsel.

Mr. Goldschein: We are objecting, may it please the Court, firstly as a basis before that would become competent the defendant would have to admit or show some evidence that their client advocated the overthrow of the government by force, and therefore has some fear of giving some evidence that would tend to incriminate her for that offense.

Mr. Margolis: I think that argument requires no answer.

The Court: It states "local Federal attorneys," and this is dated "New York, July 21."

Mr. Margolis: Yes, your Honor.

The Court: The item is dated New York.

* * * *

Mr. Margolis: This is offered upon the basis that these newspaper articles of the Los Angeles Examiner—I need hardly tell your Honor that the Los Angeles Examiner has wide circulation—and

that this is a basis indicating the fear which led to the invoking of the privilege against self-incrimination, just as an article was used in the Weisman case to the same effect.

The Court: What is the basis of your objection? Had you stated it?

Mr. Goldschein: May it please the Court, my objection is that there is nothing before this Court upon which this Court can take judicial notice that this woman actually has a fear of being involved under the Smith Act. [78]

The Court: That it is immaterial to prove what?

Mr. Goldschein: It is immaterial to prove that fact, that that story has absolutely no connection with the investigation at bar, and it proves nothing in the case.

Mr. Margolis: It proves that such a fear might reasonably exist, your Honor. That is why we offer it, that a reasonable person, in view of that sort of an article, in view of the fact that this is the greatest roundup of Communists in the history of the United States, the assertion that this is the beginning of rounding up all of the Communists, that everybody who is a member or associated with the Communist Party is threatened by it, this I say could place a person in reasonable fear.

Mr. Carter: We object on the further ground that there is no showing in the record that Ned Sparks or Dorothy Healey are members of the Communist Party.

The Court: It is immaterial. The objection is sustained. It will be marked for identification.

* * * * [79]

The Court: They have waived the foundation. It is just on the ground it is immaterial.

Mr. Margolis: Yes, I understand.

I now offer a portion of the Los Angeles Examiner dated Friday, September 17, 1948, being a part of a column entitled "Washington Scene," by George Dixon, appearing on page 23, in which the statement is made that "The Department of Justice will seek indictments against well-known Communists in key cities all over the country. The Department of Justice will go before Grand Juries with evidence gathered by its own agents."

Then it goes on to say the purpose of the investigation, that "It is designed to overplay and overshadow any cracks Dewey might make on Administration laxity in prosecuting enemies of the country."

We say this is how this investigation was started. This is the motivation and it is continuing as a result of that initial political motivating power.

We offer this for the same reasons heretofore stated as the witnesses' Exhibit D.

(The article referred to was marked Respondent's Exhibit D for identification.)

Mr. Carter: We object to the admission of the exhibit in evidence, and as part of my objection I want for the record to straighten one thing out. [80]

In our motion to require this witness to answer we desire to be limited by the Court to those ques-

tions starting with her knowledge of Dorothy Healey, eliminating the first two questions, eliminating the question, Do you know the officers of the Communist Party, eliminating the question, Do you know the party organization, and eliminating those questions for the reason that those questions are the identical questions involved in the matter before the Court, and those questions were asked of this witness before the proceeding before Judge Denman and it just happens that the witness is now brought before the Court.

The government's motion to require this witness to answer will concern itself with those questions that were asked in that part of the transcript where the question occurred after the proceedings before the Circuit beginning with the question—

The Court: Do you know Ned Sparks?

Mr. Carter: Yes, do you know Ned Sparks.

Then with that correction of our position in the record we object upon the ground that this document is immaterial, not the best evidence, hearsay, does not tend to prove or disprove any of the issues in this case.

The Court: Objection sustained. It will be marked for identification.

* * * * [81]

I offer an article, portion of an article, appearing in the Los Angeles Times dated Tuesday morning, October 26, 1948. On the first page thereof the article is entitled "U. S. Court Acts When They Spurn Questions Before Grand Jury," and the main heading being: "Ten witnesses before an ex-

traordinary session of the Federal Grand Jury were jailed for contempt of Court last night after they refused to answer questions * * *"

In this article we direct your Honor's attention particularly to the following portions which are very brief. The word that is used is "Carter," and it is evident from previous parts of the article that it refers to United States District Attorney Carter.

Mr. Goldschein: We are objecting to a description by counsel. We think he ought to read it as it is or let the Court see it.

Mr. Margolis: Very well.

"Carter yesterday called the Grand Jury into extraordinary session to consider charges of Communistic sympathy."

Another portion of the article:

"U. S. Attorney Carter refused to comment on the exact nature of the inquiry and said merely [83] that 'a number of witnesses have been subpoenaed to testify regarding an investigation begun several months ago. The Grand Jury inquiry may continue for some time.'

"He explained that 'unless happenings occur in open Court in connection with the Grand Jury proceedings, no further information can be supplied in view of rule of secrecy applied to the Grand Jury's activities.'

"From other sources it was learned that the current inquiry resulted in part from refusals of various persons to answer questions of FBI opera-

tives conducting a routine loyalty check of U. S. employees and others.”

We offer this, if your Honor please, the entire article including the parts which I have read, as witness’ Exhibit E.

(The article referred to was marked Respondents’ Exhibit E for identification.)

Mr. Carter: It is objected to on the same grounds heretofore stated, and upon the further ground that I didn’t state in the last offer, that there is no showing in the record that Dorothy Healey is a Communist or that Dorothy Healey advocates the overthrow of the government by force, on the ground that the exhibit is immaterial, not the best evidence, [84] and it is hearsay.

The Court: Objection sustained.

Mr. Margolis: I now offer, if your Honor please, an article appearing on the first page of the Los Angeles Examiner for Wednesday, October 27, 1948, the column being the fifth column over, reading: “Officials Plan ‘All-out’ Red Inquiry Here,” and referring also to the same investigation, and reading in part as follows:

“Communist groups and activities in Southern California are scheduled to undergo a ‘top-to-bottom’ investigation by a special Federal Grand Jury here.

“This was indicated by high government officials yesterday, after ten witnesses were committed to jail for refusing to answer Grand Jury questions.

“‘This is only the opening gun in the government’s inquiry into subversive and disloyal groups,’ United States Attorney James M. Carter declared.”

I offer this, if your Honor please, for the same reasons.

Mr. Goldschein: What is the date of that?

Mr. Margolis: October 27, 1948.

Mr. Carter: Objected to on the grounds heretofore stated to the last exhibit. [85]

The Clerk: Exhibit F.

The Court: Same ruling.

(The document referred to was marked Respondents' Exhibit F for identification.)

Mr. Margolis: Next, your Honor, I offer the Los Angeles Times, front page, Wednesday morning, October 27, 1948, and the article appearing on that page is headed: "Silent Witnesses May Get 18 Months," and particularly that portion of the article reading as follows:

"Both Carter and Goldschein said that in the event the inquiry turns up evidence of communistic activities other than among Federal employees they will investigate any such cases and prosecute if sufficient evidence is uncovered."

We offer that as the witnesses' exhibit next in order.

The Clerk: G.

Mr. Carter: Objected to upon the grounds heretofore stated.

(The article referred to was marked Respondents' Exhibit G for identification.)

* * * * [86]

Mr. Goldschein: Yes, may it please the court, but before we go into that, before we leave this mat-

ter, we respectfully ask the court to give the witness an opportunity, at their request, to be heard by the court so that the court can determine whether or not the witness can disclose to the court or tell the court how the answer to that question would tend to incriminate her for the violation of a Federal offense so that the court can determine that question.

The Court: That was the request just made by Mr. Margolis.

Mr. Goldschein: Excuse me. I am sorry. I didn't understand that.

Mr. Margolis: We are willing to have the witness make that kind of a statement.

The Court: Do you request it?

Mr. Margolis: The witness is willing to make that statement.

The Court: Do you request the opportunity?

Mrs. Doran: Yes.

* * * *

STATEMENT OF WITNESS LILLIAN ADELE DORAN

(The following proceedings were had in chambers, as follows):

The Court: Let the record show that there is present the witness, Mrs. Doran, the reporter, Mr. Wahlberg, the Clerk, Mr. Horn, and the bailiff, Mr. Brand.

Mrs. Doran, you heard the statement of your counsel that you desire an opportunity to make a statement to me in chambers?

Mrs. Doran: Yes.

The Court: I am extending you that opportunity now with the order that these proceedings shall be private and confidential unless and until you or your counsel indicate otherwise.

Now if there is some statement you wish to make to me which you think might shed some light on the question of whether or not the questions pending will incriminate you, will you do so?

Mrs. Doran: Thank you.

First of all, I would like to say that I do have these notes here in order refresh my memory. Is that all right?

The Court: Those are notes that you have written?

Mrs. Doran: I have written them myself, in my own handwriting. [91]

The Court: Yes.

Mrs. Doran: And these notes proceed to say that I have read in the papers articles before I appeared at the Grand Jury and they were spread all over the papers about so-called "Red" hearings and about the New York indictments and the 12 Communist leaders and about the Attorney General's findings that the Communist Party advocated force and violence, and there have been in the papers certain deportation cases based solely on this ground, that these people were subversive or Communists, and that the Attorney General was planning to bring several indictments in Los Angeles.

Therefore I refused to answer those questions when I was called before the Grand Jury because of the fear that my answers might tend to connect

me with and be a part of a chain of evidence tending to establish that I am a member of the Communist Party, and that therefore I might be indicted as a follow-up of such procedure.

The Court: Now you mentioned something there about deportation. Is there some peculiar relationship you have in connection with that? I mean to say, you are **native-born?**

Mrs. Doran: Yes, I am native-born.

The Court: In other words, there is no question of you being a citizen of any other country?

Mrs. Doran: No, no. [92]

The Court: So you do not have any fear that you would be deported?

Mrs. Doran: No.

The Court: I see.

Mrs. Doran: Not on any grounds that I am not a citizen.

The Court: I understand. Not on any grounds in connection with this?

Mrs. Doran: No.

The Court: Your fear of being deported, if you have any at all, does not arise from this?

Mrs. Doran: No.

The Court: Do you have some other statements to make?

Mrs. Doran: No.

The Court: There may be some reason which is in your mind and which you do not want to tell your lawyers about?

Mrs. Doran: No.

The Court: Frequently people find themselves in

that position. But you do not have any other statement to make?

Mrs. Doran: No.

The Court: Very well. We will return to the court room. [92]

* * * *

I have talked with the witness in chambers and she has made a statement, but from her statement no additional facts or reasons appear other than that indicated by counsel which might show or tend to show that answering the questions indicated by government counsel would incriminate or tend to incriminate her.

For that reason the order of the Court will be that the witness is ordered and directed to answer the following questions—and in that connection I would like also to observe that Government's Exhibit 1, the Transcript of the Testimony before the Grand Jury, is entitled "In the Matter of: Loyalty of Government Employees." The questions are:

Do you know Ned Sparks?

Do you have any occupation other than that? (She having previously indicated that she was a housewife.)

The next questions: Do you know Dorothy Healey?

Do you know her business or home address?

Do you know her occupation?

Do you know where she can be located?

Do you know whether Dorothy Healey is married?

Do you know her husband's name?

Do you know what his (her husband's) occupation is?

And the tenth question: If you do know it, will you tell us what his occupation is?

Mrs. Doran, you understand the order of the Court, do [93] you?

Mrs. Doran: Yes.

* * * * [94]

FRANCES L. DUFFY

called as a witness by and in behalf of the government, having been first duly sworn, was examined and testified as follows:

The Clerk: Will you state your name for the record.

The Witness: Frances L. Duffy.

Mr. Goldschein: This is relative to Philip Bock.

The Clerk: No. 8827-PH.

The Court: This is a new proceeding, Mr. Clerk, against these same parties.

The Clerk: Yes. We have given it a number.

Mr. Goldschein: I was looking for Mr. Bock.

Mr. Bock: Here.

The Court: Mr. Bock is here.

Direct Examination

By Mr. Goldschein:

Q. You are Miss Frances L. Duffy?

A. Yes, sir.

Q. On November 3, 1948, were you the official court reporter who took the testimony in the Grand Jury room? [98]

(Testimony of Frances L. Duffy.)

A. I was.

Q. Were you present when Philip Bock testified?
A. I was.

Q. Did you take down in shorthand the questions asked him and the answers he gave?

A. Yes, sir.

Q. Will you please read the questions asked and the answers he gave.

* * * *

The Witness: "Mr. Goldschein: Mr. Philip Bock, recalled.

"Mr. Bock, I believe we advised you before, when you were here before, that we are not [99] investigating you. We want you to know now that we are making an investigation with reference to Federal employees who have made a false statement to a Federal agency with reference to their affiliations with certain organizations, clubs or groups of people.

"By Mr. Goldschein:

"Q. Now, you are not employed by the Federal government, are you?

"A. No, I am not employed by the Federal government.

"Q. Sir? A. I am not.

"Q. Have you ever been employed by the Federal government?

"A. I have just been released from ten days in jail. I got out of there three minutes ago. I haven't had a chance to consult with my attorney. I know that every statement I make here is important, and might or might not incriminate me and, before I

(Testimony of Frances L. Duffy.)

let myself in for a line of questioning, I would like to consult with my attorney.

“Q. Now, do you think that answering the question of whether or not you have ever been employed by the Federal government can in any way affect you, if you have not been employed by the government?

“A. I feel that I have been persecuted, and I would like to speak to my attorney——

“Q. We are not interested in your views, Mr. Bock. We want to know whether you will answer the question.

“A. I was employed by the Federal government. I was a first lieutenant in the United States Air Force.

“Q. Answer the question.

“A. I flew 50 missions in Italy. I won——

“Q. Just a minute; just a minute.

“A. ——a Flying Cross. I won five clusters——

“Q. Wait. We asked you a question. Answer the question.

“A. You asked if I was employed by the Federal government.

“Q. The answer is ‘yes’ or ‘no.’

“A. Yes.

“Q. Did you ever hold any civilian employment with the Federal government?

“A. May I have permission to consult with my attorney?

“Mr. Goldschien: Yes, you may. [101]

“The Witness: May I consult with him now?

(Testimony of Frances L. Duffy.)

“Mr. Goldschein: Yes, you may consult with him now. We will recess you two minutes so you can consult with him, and come back.”

The witness later returned to the hearing room.

“By Mr. Goldschein:

“Q. Mr. Bock, did you talk to your attorney?

“A. Yes.

“Q. All right. Now, Mr. Bock, to the best of your recollection, are you personally acquainted with any employees of the Federal government?

“A. To the best of my recollection, I am not acquainted with any employees of the Federal government.

“Q. Do you know Dorothy Healey?

“A. I refuse to answer that question on the grounds that it might tend to incriminate me.

“Q. Do you know her business or home address?

“A. I refuse to answer that question on the grounds it might tend to incriminate me.

“Q. Do you know her occupation?

“A. I refuse to answer that question on the grounds it might tend to incriminate me, and any other questions about her.

“Q. Do you know where she can be located?

“A. No.

“Q. Do you know whether Dorothy Healey is married?

“A. I refuse to answer that question on the ground it might tend to incriminate me.

“Q. If so, what is her husband's name?

"A. I refuse to answer that question on the ground it might tend to incriminate me.

"Q. Do you know what his occupation is?

"A. I refuse to answer that question on the ground it might tend to incriminate me.

"Q. If so, what is it?

"A. I refuse to answer that question on the ground it might tend to incriminate me.

"Mr. Goldschein: All right sir. Mr. Bock, will you be back tomorrow at 11:00 o'clock. We will recess you until that time."

Mr. Goldschein: May it please the court, the government insists that there is nothing in those answers that will tend to incriminate the witness of a violation of a Federal statute. We respectfully request that the court instruct the witness that he must answer the questions.

The Court: There is one, were you ever employed by the government in a civilian capacity—

Mr. Goldschein: Eliminate that. He has answered that [103] question.

The Court: No, he did not. He refused to answer that on the ground that it might incriminate him, and in view of the nature of the inquiry by the grand jury it would seem to me that if he were forced to answer that question it might or might not incriminate him.

Mr. Carter: We agree with your Honor.

The Court: So your motion is denied on that question.

As to the remainder of them, I will hear you.

Mr. Margolis: Your Honor please, first of all we

(Testimony of Frances L. Duffy.)

wish to make a motion for a continuance upon all of the grounds stated in the case of Mrs. Doran, the preceding case, and upon certain additional grounds.

The Court: It will be deemed that all of the grounds stated in the Doran case may be offered and considered as offered and as a part of the record the same as if they had been repeated here.

Mr. Margolis: Thank you.

The Court: And all matters and things in support thereof.

Mr. Margolis: In addition we would like to point out the following facts:

This witness was subpoenaed about 7:00 a.m. a week ago Monday. From that time on for the rest of the day he was in his attorney's office, in court, before the grand jury, except [104] for meal time, for the balance of the day until about 12:30 at night. At that time he was ordered committed to the custody of the United States Marshal until such time as he should answer certain questions.

Pursuant to that order he was taken by the United States Marshal to the county jail and remained in the county jail until approximately 5:00 p.m. yesterday, which was November 3rd, during all of which time he was entitled, according to the ruling of Judge Denman, to have been on bail or to have his execution stayed. But it was not stayed. He spent that time in jail.

Immediately upon his stepping——

The Court: Pardon me. Do you want to examine this lady, counsel?

Mr. Margolis: No, I have no questions. We don't question the accuracy of the reporter's transcript.

The Court: You may step down.

(Witness temporarily excused.)

Mr. Margolis: He was served with a subpoena to appear forthwith instanter before the grand jury as he was stepping out of the jail door; he had one foot out of the jail door, not the second one, when he was served with this subpoena. No opportunity to go home, no opportunity to adjust himself to his newly won liberty, no opportunity to consult with his counsel—but immediately forthwith before the grand jury. [105]

And he appeared pursuant to that order together with the others. At that time he was questioned and ordered to come back about, I think, 11:00 o'clock this morning to this court, and he did come back, so that he had for himself, time to see his family and get home and get cleaned up, between about 6:00 o'clock last night and 11:00 o'clock this morning when he finds himself propelled again into a repetition of the proceedings as a result of which he was, according to Judge Denman's ruling, improperly committed without a stay for over a week.

Now we say to require under those circumstances this witness to continue with a legal proceeding at 5:10 at night—and that is the time, it is now 5:10—

The Court: 5:11.

Mr. Margolis: 5:11, your Honor. We are satisfied with 5:10—to have him come in and continue after normal court hours and to order his attorneys

who have been involved in the manner that I have indicated all day and all of these previous days, without any real opportunity to consult with him or to prepare on this matter, is not only unjust but is a denial of due process.

After your Honor rules on this question I want to make another motion if this motion is denied.

The Court: The motion is denied. We will proceed.

Mr. Margolis: I want to now make a motion that this [106] entire matter be continued either for a date certain several months from now, two or three months from now, or until the Circuit Court has ruled in the appeal now pending before it in the matter of Philip Bock, which I believe is No. 8787-PH—if that number is wrong my associate will correct me—on the ground that this proceeding raises identical questions of fact and of law as are presented in the other case. Even though the questions put to the witness are different, there is no material difference as far as the questions of law raised are concerned, and that therefore to continue with these proceedings is simply a method of harassing this witness and is a method of defeating the appeal, the right of this witness to appeal, by during the period of appeal making him constantly subject himself to the exact type or procedure which is being tested on the appeal.

It seems to me, your Honor, that to require him to go ahead at this time is indirectly to defeat the appeal itself, and I submit—

The Court: I do not think that the appeal can be

treated as a dismissal of the grand jury, nor do I think that the appeal, or the mandate from the Circuit Court, was broad enough to prevent the grand jury from conducting their investigation. It was limited to the questions that were there before the court. This is limited to the questions that are here. My first function and duty is to make a determination [107] on the motions before me as to whether or not these questions will incriminate or tend to incriminate this witness in connection with the proceedings before the grand jury, or at all.

Mr. Margolis: May I add that I know that it is customary when identical questions are pending on appeal and are to be decided within a reasonable period of time, or is to be anticipated that they are to be decided within a reasonable period of time, and when no useful purpose can be served by going ahead with proceedings of this kind that it is customary, and very frequently done, that cases are continued.

It seems to me that here, where this witness has made his position clear, he has claimed the right against self-incrimination, of questions which place him in the identical position which these questions do, if this proceeding is allowed to continue then, your Honor, a farce could be made out of this witness' rights to appeal. What is to stop the grand jury, if this is allowed, after these questions are asked and we go through all this——

The Court: I have not gotten to that. I cannot indulge in any imaginative proceedings. I do not

know what the grand jury is going to do. All I am concerned with is what is here.

Have you stated the grounds of your motion, counsel?

Mr. Margolis: I have stated them. I just want to add one or two sentences on the point and I will be finished. [108]

Your Honor says that he doesn't know what this witness' position is, but the fact is that your Honor knows this witness' position from what he has done in proceedings raising identical issues, and I don't think that this court or any of us should blind ourselves to the actual facts that are right in front of our eyes on any technicality.

The Court: I do not intend to, nor do I intend to be misled into it by anybody.

The motion is denied.

Do you have anything else?

Mr. Margolis: Yes, I have certain other things.

I think first of all we would like to offer——

The Court: Do you wish that everything that was offered in opposition to the motion of the government or in objection, all matters and things on behalf of the previous witness Doran, shall be admitted or shall be deemed to have been offered here to the same force and effect——

Mr. Margolis: As though they were being offered on behalf of this witness.

The Court:——as though they were being offered on behalf of this witness, and all other arguments and reasons offered in support thereof?

Mr. Margolis: Yes, your Honor. This is not to

preclude us from presenting additional matters though.

The Court: No. It will be so ordered. Everything is [109] in this proceeding now on behalf of this witness that was in the proceeding on behalf of the witness Doran. [110]

* * * *

Mr. Margolis: Upon the basis of that, your Honor, we say that the entire record in the Philip Bock case should be made a part of this record. I don't know whether this copy that we have here is a certified copy, but I think if the reporter is here it can probably be established through him.

The Court: I can take judicial notice of it.

Mr. Margolis: It is another proceeding. I am not sure whether your Honor can.

The Court: I can take judicial notice of my own records and proceedings, and so can the Circuit Court.

Mr. Margolis: In other words, we are offering this—pardon me.

(Conference between counsel.)

Mr. Margolis: Mr. McTernan directed my attention to the fact that the difference between what I am doing now and what was ordered before by the court may be made a little clearer.

The Court: I understand it perfectly.

Mr. Margolis: Before that we merely repeated the arguments. Now I want to argue the record of what happened before as evidence of what happened before.

The Court: I understand. I can take judicial

notice of [112] the proceedings and records and files.

Mr. Margolis: Very well, your Honor. [113]

* * * *

Mr. Carter: The government will stipulate that Mr. Bock was incarcerated from the time of your Honor's order until yesterday, and after bond was approved—I don't have the exact hour of his release—but some were released at 4:00 o'clock and some by 5:00 o'clock, so it was between 4:00 and 5:00 o'clock yesterday; and we will also stipulate that the marshal was instructed to serve him with a subpoena upon his release for the reason that it had been very difficult to serve these witnesses and keep them under the jurisdiction of the subpoena.

Mr. Margolis: I will accept that.

The Court: That the marshal was instructed to serve and he was served immediately upon his release?

Mr. Carter: Yes.

Mr. Margolis: Up to that point I accept the stipulation. [115]

* * * *

Mr. Margolis: We have a statement we have made previously with respect to the lack of preparation. We have nothing further to offer except I understand the witness is willing to make a statement to your Honor.

The Court: Does he request it?

Mr. Bock: Yes, sir.

The Court: Do you request the opportunity to make a statement?

Mr. Bock: Yes, sir.

The Court: Very well. The reporter, the Clerk and the bailiff will come in chambers.

STATEMENT OF WITNESS PHILIP BOCK

(The following proceedings were had in chambers, as follows:)

The Court: You heard your counsel's statement. Do you desire to make some additional statement other than what he has said?

Mr. Bock: Yes, I do.

The Court: I see that you have a paper there. You have written out—— [116]

Mr. Bock: Well, I consulted with them and——

The Court: Consulted with your lawyer, you mean?

Mr. Bock: Yes—and there are a number of points I wanted to note so I would be sure of what I was saying.

I have read in the papers and I am aware of the fact by that means that both Dorothy Healey and Ned Sparks are officers of the Communist Party in Los Angeles.

The Court: You mean you are aware of it from having read it in the papers only?

Mr. Bock: I read it in the papers and I am aware of it.

The Court: In addition to the knowledge you got from the papers?

Mr. Bock: I have to refuse to answer that question on the grounds it might tend to incriminate me.

The Court: Very well.

Mr. Bock: I am also aware of the fact that reading the newspapers that national leaders, or alleged national leaders of the Communist Party——

The Court: By the way, the order is that this is secret and confidential and will remain so and not be transcribed or disclosed unless and until you consent to it or request it, either by yourself or through your counsel, so you can feel at perfect liberty to say whatever you desire.

Mr. Bock: Well, I might want it to be part of the record without in any way incriminating myself. [117]

The Court: That is up to you.

Mr. Bock: Yes, sir.

The Court: I am just telling you that in order that you may feel free to say whatever you desire to say to me.

Mr. Bock: Well, as I was saying, I did read in the newspapers about the indictment of leaders of the Communist Party, in fact, I have read the indictment myself, and I discussed these indictments with my attorneys.

Furthermore, I am aware of the fact, from reading the newspapers, that the Attorney General was said to be planning similar indictments as these indictments in the Federal Court in New York for people in Los Angeles and other cities throughout the country.

I am also aware of the fact that through reading the newspapers that the Attorney General has found under the loyalty order that the Communist

Party is an organization which advocates the overthrow of the government by force and violence.

I am also aware of the fact, been informed of it, that deportation proceedings against certain people, aliens, have been undertaken solely because of the fact that they are members of the Communist Party.

The Court: Does that concern you particularly? You are a native-born citizen, I take it?

Mr. Bock: Yes. Well, I believe—— [118]

The Court: Do you have a feeling that you as a native-born citizen will be deported?

Mr. Bock: No, but I do have the feeling——

The Court: That others will be?

Mr. Bock: ——that the Attorney General holds that there is something criminal in being a member of the Communist Party, that if it is grounds enough to expel an alien there must be something criminal involved in it.

The Court: There is no law permitting banishment.

Mr. Bock: Nevertheless I am aware that deportation proceedings have been held.

The Court: That is one of your grounds for refusing to answer, deportation?

Mr. Bock: Yes.

I have also read that in regard to the investigations that may follow and are planned to follow in other cities, including Los Angeles, investigations which might lead to similar indictments to the indictments handed down against the Communist leaders in New York, that the expression is used that they would go from top to bottom in the Communist

Party, that impliedly nobody would be immune from this who had some connection with the Communist Party, and I fear to answer the questions which were put to me——

The Court: Do I understand by that that you do have some connection with the Communist Party?

Mr. Bock: I refuse to answer that question on the grounds that it might tend to incriminate me.

The Court: I did not quite understand your answer.

Mr. Reporter, would you read back the latter portion of his answer.

(The record referred to was read by the reporter as set forth above.)

The Court: That is what you mean, nobody would be immune who had some connection. Am I to understand that you do have some connection?

Mr. Bock: I refuse to answer that question, your Honor, on the grounds——

The Court: All right. It is your statement.

Mr. Bock:——that admission or denial of anything might incriminate me.

The Court: I just wanted to understand fully your statement, Mr. Bock.

Mr. Bock: In regard to the questions which were put to me before the grand jury, I fear to answer those questions, some of them, on the grounds that they might tend to connect me with certain individuals who might be members of the Communist Party, or that even if the question itself didn't tie me up directly with anybody, that once I began to

answer one question it would lead to another along the same line, that I might be led to answer questions which might tend to incriminate [120] me by showing that I might have some membership or affiliation in the Communist Party. And that I fear that this might incriminate me because I know that other people alleged to be Communists are now under indictment and are being prosecuted in accordance with the plans of the Attorney General.

This is the basis for which I fear to incriminate myself.

The Court: Do you have any other reasons?

Mr. Bock: I couldn't make any other statement.

The Court: Or anything that is purely private and personal to you in connection with these questions? In other words, there may be something that you do not want to tell your lawyer. I have in mind the question, do you know Dorothy Healey.

Mr. Bock: I have the utmost confidence in my lawyers and I don't have anything else to say at this time.

The Court: Nothing else at all?

Mr. Bock: No, sir.

The Court: Very well. We will convene again in the courtroom. [121]

* * * *

The Court: I have heard Mr. Bock's statement in chambers—incidentally I ordered, not only as to his statement but as to the previous witness' statement, that they remain private and confidential and secret unless and until they are requested either by the witness or counsel.

The witness has stated his reasons, some of them in addition to those that are urged by counsel, but I cannot see anything in them which would tend to show that answering the questions which are now pending would incriminate or tend to incriminate, and for that reason I must order the witness to answer the questions.

It will therefore be the order of the court that the witness Philip Bock is ordered and directed to answer the following questions:

Do you know Dorothy Healey?

Do you know the business and home address or home address of Dorothy Healey?

Do you know the occupation of Dorothy Healey?

He answered the question, do you know where Dorothy Healey is located, if I remember the record correctly, is that not correct? He said no, he did not.

Mr. Carter: That is correct.

Mr. McTernan: Not according to my notes.

Mr. Carter: That is correct. He said he didn't know [122] where she could be found or located.

The Court: That is my recollection, that he said he did not know where she could be located or found.

The fourth one is: Do you know whether or not Dorothy Healey is married?

The fifth one: Do you know her husband's name?

The sixth one: Do you know his occupation?

And the seventh one: What is his occupation?

Do you understand the order, Mr. Bock?

Mr. Bock: Yes, sir. [123]

Los Angeles, California

November 12, 1948—10:00 a.m.

The Court: Ben Dobbs? Is he present?

Mr. Dobbs: Present.

The Court: Mr. Kasinowitz?

Mr. Kasinowitz: Present.

The Court: And Henry Steinberg?

Mr. Steinberg: Present.

The Court: Very well.

Mr. Goldschein: Miss Frances Duffy, please.

FRANCES L. DUFFY,

called as a witness by and in behalf of the government, having been first duly sworn, was examined and testified as follows:

The Clerk: Your name, please?

The Witness: Frances L. Duffy.

The Clerk: Take the stand, please.

Direct Examination

By Mr. Goldschein:

Q. You are Miss Frances L. Duffy, are you not? A. I am.

Q. You were the official court reporter before the grand jury of this court on November 3, 1948?

A. Yes, sir.

Q. Were you present when the witness Ben Dobbs appeared in the grand jury room?

A. I was; yes, sir.

Q. Mr. Dobbs I believe at that time was recalled, was he not? A. Yes, sir.

Q. Did you take down in shorthand accurately the questions that were propounded to him and the answers he gave? A. I did.

(Testimony of Frances L. Duffy.)

Q. Now, Miss Duffy, will you please read those questions and answers?

A. Mr. Dobbs was recalled twice, Mr. Goldscheine, on that date. Do you want both times?

Q. Yes. And will you begin with the beginning, please. A. Yes, sir.

When Mr. Dobbs was brought in the first time these were the questions:

“Mr. Goldscheine: Mr. Dobbs, we are not investigating you. The grand jury is making an investigation with reference to certain Federal employees who have made false statements with reference to their affiliation with certain clubs, organizations or groups of people.

“Q. (By Mr. Goldscheine): Now, you never have been employed by the Federal government, have you?

“A. I have just been out of jail about five minutes, and I just spent ten days in jail, and, since this jail sentence, I think I ought to have the right to speak to my attorney about the rest of these procedures.

“Q. You mean there is some question with reference to whether you are a Federal employee that you want to consult your attorney about?

“A. There is some question about getting myself settled, after ten days in jail. There is no question about what you refer to generally or specifically, but there is some question about getting myself settled.

“Mr. Goldscheine: All right, we will recess you

(Testimony of Frances L. Duffy.)

five minutes. Your attorney is outside. Will you go out and ask him that question, and return here."

Then Mr. Dobbs returned and these were the questions and answers that were asked and given:

"Q. (By Mr. Goldschein): Did you talk to your counsel, Mr. Bock?

"A. I did. Dobbs is my name.

"Q. That is right; I am sorry. Mr. Bock just left here. Mr. Ben Dobbs, recalled.

"Now, Mr. Dobbs, are you employed by the Federal government? [140]

"A. At the present time?

"Q. Yes, sir. A. I am not.

"Q. Were you ever employed as a civilian by the government? A. I was not.

"Q. To the best of your recollection, are you personally acquainted with any employee of the Federal government? A. I am not.

"Q. Do you recall the names of acquaintances that you may have that are employed by the Federal government?

"A. I said that, to my knowledge, I am not acquainted with anybody that is employed by the Federal government.

"Q. Do you know Dorothy Healey?

"A. I refuse to answer that question on the grounds that it may incriminate me.

"Q. Do you know her business or home address?

"A. I refuse to answer that question on the ground that it may incriminate me.

(Testimony of Frances L. Duffy.)

“Q. Do you know her occupation?”

“A. I refuse to answer that question on the same grounds.

“Q. Do you know where she can be located?”

“A. I do not.

“Q. Do you know whether Dorothy Healey is married? If so, what is her husband’s name?”

“A. I refuse to answer that question on the ground that it may incriminate me.

“Q. Do you know what her husband’s occupation is, if she is married?”

“A. I refuse to answer that question on the grounds that it may incriminate me.

“Mr. Goldschein: All right, sir, we will recess you until tomorrow at 11:00 o’clock, Mr. Dobbs.”

Mr. Goldschein: Now, may it please the court, we are challenging that claim to self-incrimination, insisting that the witness has no privilege of self-incrimination and suggest respectfully that the court hear the witness, if he so requests, privately in chambers so that the court can determine whether or not the answers to those questions would tend to incriminate the witness for the violation of a Federal offense.

The Court: Very well.

Mr. Margolis: May we first have read back, your Honor, the questions which were asked and which the witness refused to answer after the question “Do you know her occupation.” May we have the reporter read that back?

(Testimony of Frances L. Duffy.)

The Court: It begins with "Do you know Dorothy Healey?"

Mr. Margolis: I have the first three, your Honor.

The Court: Very well.

"Do you know Dorothy Healey?"

"Do you know her business or home address?"

"Do you know her occupation?"

Mr. Margolis: I have those.

The Court: "Do you know where she can be located?" Is that the one you want to begin with?

Mr. Margolis: I want all from there on.

The Court: After "Do you know her occupation?"

Mr. Margolis: Yes.

(The record referred to was read by the reporter as follows:

("Q. Do you know where she can be located?

("A. I do not.

("Q. Do you know whether Dorothy Healey is married? If so, what is her husband's name?

("A. I refuse to answer that question on the ground that it may incriminate me.

("Q. Do you know what her husband's occupation is, if she is married?

("A. I refuse to answer that question on the grounds that it may incriminate me.")

Mr. Margolis: Your Honor please, on November 4, 1948, there were certain proceedings before your

Honor in re Lillian Adele Doran, No. 8796-PH and Philip Bock, No. 8827-PH.

Time can be saved if the court were to consider as having been offered on behalf of Mr. Ben Dobbs in these proceedings all of the evidence, offers of proof, exhibits and other matters—

The Court: And things?

Mr. Margolis: —other matters and things contained in those records.

The Court: That is, that were offered on behalf of Lillian Adele Doran and Philip Bock or either of them in opposition to the motion of the government?

Mr. Margolis: As though they were being offered today for the first time on behalf of Ben Dobbs.

Mr. Goldschein: May it please the court, on that occasion counsel for these witnesses didn't have an opportunity to bring those affidavits, papers, records and other things that they were going to bring in here and so we stipulated to save the time of the court and everybody else. At this time we think they have had ample time to bring those affidavits in. It is now four weeks, and we would like to see some of those affidavits that they intend to offer, or offers of proof that they are going to make by affidavit.

Mr. Margolis: If your Honor please, the reason we haven't [144] done that—

The Court: That is up to them. If they want to stand on their record, they can.

Mr. Goldschein: We are not stipulating.

The Court: He is not asking you to stipulate. He is asking me for an order.

Mr. Goldschein: I am sorry.

Mr. Margolis: I might state this, your Honor, that

your Honor ruled out all of these matters as immaterial and if counsel's position is that we have to put a witness on the stand and ask the witness the questions in order to make the offer of proof, why we shall proceed to do so, but we have—

The Court: Counsel's statement was made under a misapprehension that you were asking him for a stipulation. I think that matter is now cleared up. You are asking me for an order?

Mr. Margolis: Yes.

The Court: To the effect that all of the things that you have mentioned may be deemed to have been put in evidence and the record here as grounds of opposition and objection to the motion of the government with the same force and effect as if they were in *haec verba* produced at this time and now on behalf of this witness and in opposition to the present motion of the government for an order directing this witness to answer the questions.

Mr. Margolis: The only problem that that presents, your [145] Honor, in view of counsel's statement, is this: Ordinarily before an offer of proof is made the proper method of procedure is to put a witness on the stand, to ask him an appropriate question or series of questions, to have the objections to those questions sustained, and then to make an offer of proof.

Now that procedure was not followed in the other matters because there wasn't time to get the witnesses. We did not produce the witnesses today for two reasons: One was that this procedure of incorporating the record has been followed in a number of instances without objection and, second, we saw

no useful purpose to be served by producing witnesses, to have them sit on the stand and asked questions as to matters which the court had already ruled were immaterial, and when we knew the rulings were going to be the same.

However, in view of counsel's position we again want to ask for time. We have been misled. We want to ask for time to produce those witnesses and we are prepared to establish each and every one of the matters on which we offered proof, but we have been misled by counsel's acquiescence to this type of procedure in the past. We don't want this record to go off on the basis of a technicality. Counsel apparently doesn't have enough confidence in the substantive points and therefore is trying to get us in the corner here on a technicality. I want to say to this court that we are prepared to prove [146] everything that we have said, but we have proceeded in this manner simply because this is the manner in which other cases have gone ahead and we anticipated that prior proceedings would be followed here. We anticipated that counsel was not going to raise this sort of a technical situation in a situation where the court had already ruled that these matters concerning which we are prepared to submit direct evidence were immaterial.

We again therefore request your Honor for time in which to produce those witnesses on the basis of counsel's technical assertions here and putting us on our proof with respect to these matters.

The Court: The motion for a continuance is denied. The order of the court will be to the effect as I have just previously stated, and in addition to that

all of the objections made on behalf of the government in connection with these matters and things and evidence and offers of proof that were made on behalf of the witnesses will be incorporated and deemed to be a part of the record with the same force and effect as if they were again repeated here, so that your whole record is the same on both sides with relation to this witness as with the two previous witnesses.

Mr. Margolis: Do I understand that counsel in effect has objected to the admissibility—

Mr. Goldschein: In view of the court's statement, we [147] withdraw our objection.

The Court: You are withdrawing your objection?

Mr. Goldschein: I am withdrawing our objection in view of the court's statement.

The Court: The objections you made heretofore?

Mr. Goldschein: Yes.

The Court: Let us get the record clear. Are you withdrawing the objections you made to the offers of evidence and statements of proof that were offered on behalf of the others, or are you—

Mr. Goldschein: No.

The Court: What objection are you withdrawing?

Mr. Goldschein: The objection previously made this morning with reference to demanding proof and not making any stipulation that had previously been made in the other cases.

The Court: Very well. I think, Mr. Margolis, that that clarifies it.

Mr. Margolis: That clarifies it.

The Court: The objection made this morning to the motion of Mr. Margolis to make the record of

other cases the record in this case is overruled in any event, and the order made will stand.

Now does the witness wish to make a statement privately to the judge in chambers under the same circumstances as the previous witnesses?

Mr. Margolis: We would like an opportunity to consult with him with respect to that matter, but we have some additional argument to make to your Honor on these points.

The Court: Very well.

* * * *

Mr. Margolis: In other words, the effect of the granting of the stay is this, that it is a ruling that this witness has a right to have these questions tested on appeal and may not be required in the meantime to answer these questions, because to require him, or to use coercion upon him, to require him in the meantime to answer these questions is to effectively deprive him of the right of appeal because if he is coerced pending the appeal into answering the questions which are the subject matter of the appeal, the appeal becomes moot.

The Court: Mr. Margolis, you urged that same thing in relation to the witness Bock the other evening.

Mr. Margolis: This is preliminary to citing some authorities, your Honor, and I ask the court's indulgence to be permitted to spell this argument out.

The Court: If you have new matters, let us get to them, but let us not hash over the same things.

Mr. Margolis: This is a necessary foundation

for my argument, your Honor, because in order to make this point crystal clear to the court, if I can——

The Court: I understand it.

Mr. Margolis: Very well. I will try to avoid repetition. But it is not possible when one goes on which an argument to always completely avoid it.

* * * *

The Court: Before proceeding in the matter with relation to the first ten proceedings (the numbers of which I have forgotten), I made an order that the statements made to the judge in chambers will be private until released by the witness or their counsel. The reporter advises me that he is in receipt of a letter from Mr. Margolis requesting that the transcript of the first ten proceedings be transcribed. I authorized the reporter accordingly to transcribe them and deliver them and place a copy in the official files and proceedings so that they are now public, relying upon the authority of counsel.

The reporter advises me that he is now in receipt of another letter, dated November 12, with relation to the proceedings concerning Lillian Adele Doran, No. 8976-PH, and Philip Bock, No. 8827-PH, requesting that copies be prepared. This is signed by Mr. McTernan.

Accordingly, I will hand this to the Clerk for ling and direct that a photostat be placed in the other file, and authorize the reporter to transcribe the proceedings on the basis that that is the release of the privacy by the witnesses.

Mr. Margolis: Those facts as stated by your Honor are correct.

* * * *

Mr. McTernan: The next case is *In Re Walsh*, 104 F. 518. This is also a District Court opinion, your Honor.

The case arose on a certificate and order to show cause for a referee in bankruptcy. The bankrupt had refused to identify his signature on statements made over his name to a third party, claiming his privilege against self-incrimination.

Here the court, on the basis of the Counselman case, held that the privilege was properly claimed, saying:

“The question asked might certainly tend to incriminate the witness if the statement made to the third party were false and the third party relied on it in furnishing the goods in question. Then Walsh would be guilty of obtaining property under false pretenses.”

Now here again, your Honor, the court is simply looking at the situation in the light of the facts which exist and the possibilities of prosecution that exist in the state of the law without any details showing the facts, without requiring the bankrupt to make admissions of participation in any kind of a fraudulent scheme, and simply saying that on the possibility that this statement which he was asked to identify contained false statements he would then be guilty of a crime of obtaining goods under false pretenses, or might be prosecuted for such a crime.

The Court: His name appeared on the document and it was in writing, so the question is whether or not it was his signature. If the name appears in writing the presumption is that the man signed it. So obviously I cannot see any analogy there.

Neither can I in the particular case which I just examined, because there it was a proceeding under a court-martial and there was a closer connection between the defendant in that case and the publication which appeared than the mere asking of the question.

Go ahead, counsel.

Mr. McTernan: I submit to your Honor that if the government wanted to prove that this was Walsh's signature and they asked him for information and he claimed his privilege, then the approach of the court is pertinent here and is applicable here. We are not governed, nor is the court governed, by what questions the government need not ask.

The Court: That would be analogous if they had a third person in and said, "Do you know whether or not that is Walsh's signature?" Then you would have an analogy with this case.

Mr. McTernan: Obviously we are not going to find a whole series of cases which are on all fours with this case.

The Court: No, I do not think you are going to find any analogies. I have looked at the books myself and I cannot find any analogy where anybody has ever attempted to claim immunity on the basis of the questions that are asked here or on the basis of this immunity.

Mr. McTernan: What we are trying to show to the court and will if we are given the opportunity is that the courts are extremely liberal in assessing the claim of the privilege against self-incrimination and they do not require the witness claiming the privilege to spell out in every detail how the incrimination would occur, because by doing so the witness would be giving up the very thing he is claiming.

The Court: Nor can it be left to mere imagination as to what the answer might be. There must be some reasonable relationship between a possible crime which the witness might have committed and the answer that he might give to the question, a reasonable answer to the question, and I have been unable to see it as yet. I have followed your argument very closely and I still cannot see it.

Mr. Margolis: The crime, your Honor, as spelled out by the gentlemen who sit at the other table——

The Court: We have gone over that before, under the Smith Act with relation to the Foster indictment, and I have studied the matter over very carefully and I cannot see any reason for changing my views as heretofore expressed.

Mr. McTernan: I would like an opportunity to finish with these cases, your Honor.

The Court: Particularly in view of the fact that in each one of these cases they have stated to each one of these witnesses that they are not under investigation.

Mr. McTernan: But, your Honor, that has nothing to do with the question. The point is that in

any proceeding the government cannot compel an answer which could be used in some other situation to involve him in prosecution, and it doesn't make any difference whether these people are under investigation or not under investigation. The witness in the Counselman case was not under investigation.

The Court: I think it would in the event that these witnesses were ultimately indicted for some offense.

Mr. McTernan: It might make a stronger case.

The Court: Then certainly who would be the first one here to claim that they had immunity?

Mr. McTernan: We have stated our position to the court on immunity. We say that there is no law applicable to this situation by which directly or indirectly any possibility of immunity could be claimed or given, and it is significant that at no time in any of these proceedings beginning with October 25th has government counsel claimed that there was any basis upon which these witnesses could be given immunity.

The Court: I do not mean to be expressing any final opinion as to whether the statement made by the prosecutor to these witnesses did or did not grant immunity; but on the general subject of immunity I have heretofore expressed myself, and that it lies in the constitutional right. I do not think it lies necessarily or solely or exclusively by statute. That is the effect of the Supreme Court's holding in relation to those southern cases, the names of which I have forgotten now, where a

man gave a confession under circumstances which the court held was improper and the confession was used to convict him.

Mr. Goldschein: The McNabb case.

The Court: You are all familiar with the cases that I have in mind.

But the court says you cannot do that. So the net result is he cannot do it because the man cannot be forced to testify against himself. In other words, he cannot get a confession out of him and then prosecute him or use it against him. So if that is not constitutional immunity, I do not know what it is.

Mr. McTernan: I wish you would weigh that against the issues involved in the Counselman case, where the question is whether he could be forced to testify against himself and whether an immunity statute was sufficient, and they held that the immunity statute was not sufficient because it wasn't broad enough.

The Court: Yes. There are several statutes relating to particular types of offenses where they give immunity. I recall, I think during the NRA days, the National Industrial Recovery Act, had some provision in it, if I remember correctly, where a person would be specifically granted immunity if he came forward with certain information from the antitrust laws. But that is a different situation, that is a statutory immunity, and granted with relation to the attainment of a particular object of Congress.

You would have a similar situation here if Con-

gress had passed some general act condemning the Communist Party or anything that it stands for, or the Communist Party by name, and said that anyone who comes forward to give information will be granted immunity. But you do not have that here.

* * * *

Mr. McTernan: But going on with the question of the approach of the courts to the question of the claim of privilege, the next case I want to cite is *Ex Parte Irvine*, 74 F. 954, where in a criminal case—a criminal trial, not a grand jury proceeding—there had been testimony as to the participation by three individuals whom we shall call A, B and C in a lottery business in certain cities in Ohio and Kentucky; that they employed carriers to transport bets and money between these cities.

The witness was asked at the trial whether during the period in question A, B and C were not engaged in and connected with the lottery, and what the duties of one of these three people were, and whether one of these three people was a carrier of bets and money between the two points. And they held that the claim of privilege against self-incrimination there was proper, saying that the answers would tend to incriminate since admissions by the witness as to what the business of A, B and C was would be relevant to establish that A, B and C were engaged in business at the time in question and that this would be a material link in the chain of evidence to establish the possible guilt of the witness on a charge of conspiracy to violate the very laws that were involved in that case.

Now this, I submit, on its facts becomes very close to the situation here. Here in this case, too, a witness is being asked what he knew about somebody else, and this he refused to answer on the ground that to reveal his knowledge might incriminate him on the very charges in which these people were involved.

I cite this particularly, your Honor, because your Honor expressed concern over the question.

The Court: What is the citation?

Mr. McTernan: 74 F. 954.

The Court: In this case the witness was called during the course of the trial before the trial jury.

Mr. McTernan: Yes, that is what I indicated.

The Court: And prior to the time he was called to the witness stand there was previous evidence that the witness had actually carried the lottery packages back and forth, so that there was evidence before the court from which the court could reasonably and readily conclude, in view of the previous testimony of a witness under oath, that this witness here had participated in the lottery, that if he would answer the question and admit that he knew them, and also admit that he carried packages, it would incriminate him.

Mr. McTernan: But your Honor doesn't mean, does he, that in every case where the witness claims the privilege he first has to testify under oath that he has committed the crime?

The Court: I did not say that.

Mr. McTernan: That is the purport of your statement.

The Court: I did not say that and there was no implication to that effect. I said, what had occurred there was before this witness was called upon to testify another witness had testified under oath that he actually had committed an offense, so the court had before it something more than some mere claim, some possible idea that a person might, by saying that they knew someone or know their address, be incriminated. I just cannot see any analogy to this case, counsel.

* * * *

Mr. McTernan: And the question which your Honor has to decide is very similar to the problems that were put before Lord Coke at the time the star chamber was conducting inquisitions similar to the ones this grand jury is in, and similar to the cases that were presented before the Colonial courts before the Revolution.

The Court: I have seen no similarity between the grand jury proceedings and the star chamber session as yet.

Mr. McTernan: I have, your Honor, and I would be glad to elucidate.

The Court: In these grand jury proceedings the questions are, "Do you know." The witnesses have had an opportunity to be heard and up to now I have decided that their answers will not incriminate them.

Mr. McTernan: We have tried to show to this court that this grand jury, through the admissions of the United States Attorney for this District, is

engaged in an investigation of Communist activities from "top-to-bottom," looking to any possible violations of law by people with whose political philosophy the United States Attorney disagrees. And we say that a case which arises out of an inquisition like this, your Honor, is very closely similar to the inquisition of the star chamber and very similar to the writs of assistance used by the Colonial governors against American patriots in the Colonial days. We say here the responsibility of the court is the same as the responsibility of Lord Coke. It is the same as the responsibility of the United States Supreme Court in recognizing this vicious practice in cases such as *Anderson v. United States*, where this kind of prosecution against Anderson was reviewed by Mr. Justice Black, and we hope that the real nature of these proceedings will be recognized by everyone who has the opportunity to know about them, your Honor, and particularly this court, so that the right of people in this community to be free in their political beliefs and not subjected to a "top-to-bottom" investigation at the whim of the United States Attorney who disagrees with their political philosophy, that this kind of thing will be ended and that this kind of hyper-technicality of asking questions as remote as the United States Attorney can frame them from the actual issues as to what he is going after can be used to put people in jail, not because they refuse to answer questions, your Honor—that is not the purpose of the United States Attorney: the purpose of the United States

Attorney is to put these people in jail for what he thinks they think, and that is the only reason.

* * * *

Los Angeles, California

November 12, 1948; 1:30 o'Clock P.M.

* * * *

Mr. Goldschein: May it please the court, we have heard much in these past few weeks about what the Attorney General did and about what the Attorney General said, and the fact that the Communist Party was listed as a subversive organization. Nothing was said about the other organizations that were listed as subversive. The only complaint was that the Communist Party was on that subversive list.

Now let me call the court's attention to the fact that since it had already been touched on I would like to point out that the German Bund was also on that subversive list of the Attorney General, the Dante Alighieri Society was also on that subversive list of the Attorney General; so were the Friends of New Germany on that subversive list of the Attorney General. The Lictor Society was a Fascist organization on that list, and the German-American Vocational League was also on that list.

So the Attorney General didn't merely single out and select the Communist Party as a subversive organization. He named all those that he thought were organized or had interests that were adverse to the government of the United States. But he said nothing, and Congress has enacted no laws, which made any of those organizations illegal.

Now it is our position in this case, may it please the court, that neither the Communist Party nor any member of that party, nor any associates of the members of that party, are entitled to any greater privilege than any other citizen of the United States; that every citizen who is subpoenaed before this grand jury must answer questions propounded to them unless they can show to the court that the answer to those questions would tend to incriminate them for the violation of a Federal offense.

That was determined for the first time, may it please the court, under the administration of President Jefferson when the war for civil rights had just been concluded and when Chief Justice Marshall rendered his famous decision in the Aaron Burr case on that very question of contempt. No witness can decide for himself whether or not the question propounded to him would tend to incriminate him for the violation of a Federal offense. He can determine that he will not answer when the court orders him and then when he determines that it is at his peril.

Were the law otherwise than that the member of any organization, whether it be a totalitarian organization, whether it be a Fascist organization, whether it be a Communist organization, if the newspapers published a story with reference to a grand jury investigation as to any one of those organizations every member of that organization and every individual who had ever been associated with any member of that organization, if sub-

poenaed before the grand jury with reference to any material fact, could claim their privilege against self-incrimination because they had at one time been associated with a member of that organization.

And it goes further. It wouldn't alone pertain to social organizations or political organizations, but it would also pertain to gangs and mobs.

Let us say for the sake of illustration that the newspapers today published a story with reference to a man being found dead in a ditch allegedly killed by a member of the Capone organization. Could it be possibly held that every member of that Capone organization who is subpoenaed in before that grand jury, whether he knew anything directly about that killing or not, or had anything to do with it, could claim his constitutional privilege against self-incrimination because he was associated with that organization or was associated with a member of that organization?

The president of a corporation is not privileged to claim his privilege against self-incrimination when subpoenaed to bring the books of that corporation in before the grand jury. An official of a labor union has no privilege against self-incrimination when ordered to bring the books of that labor union in before the grand jury. Why then are members or associates of members of the Communist Party claiming any special privilege? By virtue of what right? Are they especially annointed? What greater privilege are they en-

titled to than I would be, or any other citizen of these United States would be?

We insist, may it please the court, that the first case decided in this country by Chief Justice Marshall and the last case decided by the Supreme Court of the United States on this question, all cases in between hold to the same thing. In the case of *Camorota v. United States*, may it please the court, 111 F. (2d), *United States v. Flegenhimer*, 82 F. (2d), *United States v. Winberg*, 62 F. (2d), *O'Connell v. United States*, 40 F. (2d)—in each of those except the *Camaroto* case the question was raised, do you know a certain individual.

In the *Flegenhimer* case the question was asked, "Do you know *Di Larmi*," and *Di Larmi* was an alias for *Flegenhimer*. He refused to answer that question and the court held in that case that there was no privilege against self-incrimination involved there because his knowledge of *Flegenhimer* or *Di Larmi* couldn't possibly incriminate him although he had a bank account with him.

In the *O'Connell* case the question was, "Do you know where *Malloy's* place is," and he refused to answer that question. It was a lottery investigation by the grand jury. And in that case the court held that he was not privileged to refuse to answer that question.

I can call off case after case on that question, may it please the court, but it proves nothing and enlightens the court no more than did the original case in the Supreme Court, the *Aaron Burr* case,

and the Mason case. They are all on the same point. And in the Mason case there is no need of me going into the facts of that case because the court has already heard them discussed and discussed them during the course of this argument.

The Court: The questions of law that have been raised do not seem to me to throw any different light upon the situation than that heretofore done. I can see no reason for reaching any different conclusion than I have heretofore reached concerning the question, nor extending myself at length on the points that have been raised by counsel or the cases that have been cited. As I stated to Mr. McTernan, the question is whether or not these questions will incriminate the witnesses.

I must say that in so far as the appeal is concerned, of course the parties have a right to an appeal, but it is not in every case that a man is released during the appeal. Very frequently people take appeals and serve their term out in the penitentiary and their cases are either affirmed or reversed after the appeal is decided. Because a man has a right to take an appeal does not mean he has a right to thwart the processes of the court or the orders of the court pending the appeal. So much for that.

If the witness desires to make a statement to me privately to me in chambers, he may do so under the conditions heretofore indicated. This is the witness Dobbs. Have you reached a conclusion in that respect?

Mr. Margolis: Yes. We merely want to answer

Mr. Goldschein, but in view of your Honor's remarks perhaps it won't serve any useful purpose.

The Court: Do you desire, Mr. Dobbs, to make a statement privately in chambers to the judge?

Mr. Dobbs: Yes, sir.

The Court: Very well. The reporter and the Clerk and the bailiff will come into chambers.

STATEMENT OF WITNESS DOBBS

(The following proceedings were had in chambers, as follows:)

The Court: Yes, Mr. Dobbs. You wish to make a statement at this time?

Mr. Dobbs: That is right, sir.

The Court: Have you written it out and you wish to read it?

Mr. Dobbs: No. I have just made a few notes.

The Court: Very well.

Mr. Dobbs: In view of the fact that there have been many newspaper articles of recent date stressing the point or emphasizing that the government is going to conduct a full-scale investigation of Communist activities, and in the publicity relative to the indictment of the 12 Communist leaders, or alleged Communist leaders, that come up, I believe, next Monday for trial, and in view of the fact that the government takes the position that aliens who may be members of the Communist Party are subject to deportation proceedings because of the government's contention that Communists are advocates of force and violence against the government, and in view also of the whole

spreading thesis through various committees of the guilt-through-association theory, that I still maintain the position that I refuse to answer questions about Communist organizations, alleged Communist Party members, in the view that the answers to these questions might incriminate me.

For instance, I have read that Mr. Sparks and Mrs. Healey are leaders in the Communist Party and if I answer these questions relative to these people, or any knowledge I may have of these people, that I am afraid that my answers might tend to link me to the Communist Party and that these answers before the grand jury might tend to create a chain of evidence that might be used against me.

That is all of my statement.

The Court: You have touched on one point there that your counsel has not touched on, and that was with relation to the deportation of aliens. Is there some feeling that you would be subject to deportation? I mean to say, you are a native-born citizen, are you?

Mr. Dobbs: I am, sir.

The Court: Yes?

Mr. Dobbs: I am a native-born citizen. I certainly want to make that clear.

My thinking on it is this, that in view of the fact that the government maintains that—well, I will put it this way—there are now I believe around 150 or 160 cases throughout the country of deportation proceedings of people who are being deported because they are Communists and, according

to the government, therefore favor the advocacy of the overthrow of the government by force and violence. It is only that I am afraid if my testimony before this grand jury might link me to the Communist Party I, too, would fear that possible proceedings could come against me. Not that I am afraid of being deported, of course not.

The Court: Is there anything else that you want to say?

Mr. Dobbs: No, sir.

The Court: Very well.

(The following proceedings were resumed in open court:)

The Court: By the way, the same order of secrecy and privacy made concerning the other witnesses will apply as to Mr. Dobbs until either he or his counsel release it.

Mr. Dobbs has made a statement to me and he has added no additional grounds to that advocated by his counsel, nor shown any other reasons why the court should hold that the answers would incriminate him to any of these questions. Accordingly the order is made that the witness, Mr. Dobbs, shall appear before the grand jury and answer the following questions:

Do you know Dorothy Healey?

Do you know her business and home address?

Do you know her occupation?

Do you know where she can be located?

Do you know if she is married, and if so what her husband's name is?

Do you know her husband's occupation?

Do you understand the order, Mr. Dobbs?

Mr. Dobbs: Yes, sir.

The Court: Very well. Next matter.

Mr. Goldschein: Miss Frances L. Duffy, please.

FRANCES L. DUFFY

called as a witness by and on behalf of the government, having been first duly sworn, was examined and testified as follows:

The Clerk: State your name.

The Witness: Frances L. Duffy.

The Clerk: Take the stand.

Mr. Goldschein: The next witness, may it please the court, is Samuel Harry Kasinowitz. Mr. Kasinowitz was recalled by the grand jury, may it please the court, and asked certain questions and refused to answer those questions on the ground that the answer would tend to incriminate him. The government challenges that right and asks the court to hear the questions and answers to determine that question.

The Court: Very well.

Direct Examination

By Mr. Goldschein:

Q. This is Miss Frances L. Duffy?

A. Yes, sir.

Q. Miss Duffy, on November 3, 1948, were you the official court reporter in the grand jury?

A. Yes, sir.

The Court: You had been sworn as such?

The Witness: Yes, sir; I have.

(Testimony of Frances L. Duffy.)

Q. (By Mr. Goldschein): Were you present when Samuel Harry Kasinowitz was recalled as a witness before that grand jury? A. I was.

Q. Did you take down in shorthand the questions propounded to him and the answers that he gave? A. I did.

Q. Will you read those questions and answers, please, ma'am, beginning at the beginning, any statement made to him. A. Yes, sir.

"Mr. Goldschein: Mr. Samuel Harry Kasinowitz, recalled.

"Now, Mr. Kasinowitz, this grand jury is not investigating you. They are making an investigation with reference to certain Federal employees who made a false statement to a Federal agency with reference to their affiliation with certain groups or clubs or organization.

"Q. (By Mr. Goldschein): Now, you are not employed by the Federal government, are you?

"A. No.

"Q. Have you ever been employed by the Federal government? A. No.

"Q. To the best of your recollection, are you personally acquainted with any employees of the Federal government?

"A. Not to my knowledge.

"Q. Do you recall the names of any of your friends or acquaintances that are employed by the Federal government?

"A. Not to my knowledge.

"Q. Do you know Dorothy Healey?

(Testimony of Frances L. Duffy.)

"A. Well, I can't answer that question. I haven't had an opportunity to consult with my attorney.

"Q. All right. Do you know her business or home address?

"A. I have to give the same answer.

"Q. Do you know her occupation?

"A. I have to give the same answer to that question.

"Q. Do you know where she can be located?

"A. I will have to give the same answer to that question.

"Q. Do you know whether Dorothy Healey is married?

"A. I still have to give the same answer.

"Q. Do you know what her husband's name is?

"A. Same answer.

"Q. Do you know what his occupation is, if you do know him?

"A. I have to give the same answer.

"Q. We will give you five minutes. Will you step outside. Your lawyer is outside, is he?

"A. Yes.

"Q. Consult with him, and we will have you back. You won't leave? A. No."

Then he was recalled in a few minutes and the following took place:

"Q. (By Mr. Goldschein): Mr. Kasinowitz, did you see your lawyer? A. Yes.

"Q. You had an opportunity to talk with him, did you? A. Yes.

(Testimony of Frances L. Duffy.)

“Q. All right. Now, are you employed by the Federal government? A. No.

“Q. Were you ever employed by the Federal government? A. No.

“Q. Do you recall the name of any of your friends or acquaintances that are employed by the Federal government?

“A. Not to my knowledge. Not to the best of my knowledge can I recall any names.

“Q. Do you know Dorothy Healey?

“A. I must refuse to answer that question on the grounds that it might incriminate me.

“Q. Do you know her business or home address? A. Same answer.

“Q. Do you know her occupation?

“A. Same answer.

“Q. Do you know where she can be located?

“A. Same answer.

“Q. Do you know whether Dorothy Nealey is married? If so, what is her husband's name?

“A. I must give the same answer to that question.

“Q. Do you know what his occupation is, if she is married? A. Same answer.

“Mr. Goldschein: All right, sir. We will recess you, sir, until tomorrow morning, 11:00 o'clock.”

The Court: Cross-examination?

Mr. Margolis: No cross-examination.

The Court: Step down.

(Witness excused.)

Mr. Goldschein: The government insists, may it

please the court, that there is nothing in the questions that will elicit any answer that would tend to incriminate the witness for the violation of a Federal offense. We respectfully ask the court to give the witness an opportunity to be heard privately in chambers so that the court may be able to determine whether or not there is any present danger that the answer that the witness may give may tend to incriminate him for the violation of a Federal offense.

Mr. Margolis: Your Honor please, at this time we wish again to propose that the record in the two cases—pardon me.

(Conference between counsel.)

Your Honor please, I want to again make a motion for a continuance on the same grounds as were previously stated with respect to the matter of Ben Dobbs.

The Court: Same ruling. The motion is denied.

It may be deemed that all of the matters and things offered in support of that motion may be deemed to have been offered in behalf of this witness.

Mr. Margolis: Now, if your Honor please, I would like to suggest, in order to save time, that the entire record as made in the case of Ben Dobbs, the case preceding this one, [205] and in which there was incorporated an earlier record in two other cases, be deemed that each and every part thereof, including the evidence offered, offers of proof, argument and all matters and things, all stipulations, be deemed to be included in and be part of this record as though offered for the first time on behalf of this witness.

The Court: It is so ordered, as well as all of the objections made by either party.

Now does the witness wish to make a statement?

Mr. Margolis: Yes, your Honor.

The Court: Do you wish to do so?

Mr. Kasinowitz: Yes.

The Court: The reporter, Clerk and bailiff will come into chambers.

STATEMENT OF WITNESS KASINOWITZ

(The following proceedings were had in chambers, as follows:)

The Court: Do you wish to make a statement?

Mr. Kasinowitz: Well, your Honor, I hold to the position that I might be incriminated principally on three grounds:

First, the developments which have preceded our involvement in this grand jury hearing, particularly with regard to the trials in New York which come up in a few days, and also with respect to the fact as was indicated in court that the Communist Party is viewed and so designated by the Attorney General's office as a subversive organization, and thirdly on the grounds that in regard to this particular question I have become aware of the fact that Dorothy Healey is or was a leading officer of the Communist Party in Los Angeles, and I feel that my answer of the questions that are directed to me I might place myself in the position of incrimination.

That is essentially the statement that I wish to make.

The Court: Do you have anything else to say?

Mr. Kasinowitz: No.

The Court: No other reasons?

Mr. Kasinowitz: No, sir.

The Court: Very well.

The Court: Same stipulation concerning the grand jury?

Mr. Margolis: Yes, your Honor.

Mr. Goldschein: So stipulated.

The Court: It will be the same order concerning the secrecy and privacy of the witness' statement until released by him or his counsel.

Mr. Kasinowitz has stated to the court privately his reasons for refusing to answer the questions. He has added nothing to the grounds or the reasons heretofore urged by his counsel, nor shown any reason why the answers to these questions would incriminate or tend to incriminate him, and for that reason the order of the court will be the same, that Mr. Kasinowitz is now ordered to appear before the grand jury and to answer the following questions:

Do you know Dorothy Healey?

Do you know her business or home address?

Do you know her occupation?

Do you know where she is located or can be found?

Do you know whether or not she is married?

Do you know the name of her husband?

Do you know her husband's occupation?

Do you understand the order, Mr. Kasinowitz?

Mr. Kasinowitz: Yes, sir.

The Court: Very well.

Next matter.

* * * *

Mr. Goldschein: May it please the court, the witness Henry Steinberg appeared before the grand jury and was asked certain questions which he refused to answer claiming the privilege against self-incrimination. The government believes that he has no privilege of self-incrimination with reference to those particular questions and challenges that privilege of self-incrimination with reference to those particular questions and challenges that privilege and asks the court to hear us on that matter.

The Court: Very well. Proceed.

Mr. Goldsmith: Miss Frances Duffy. [208]

FRANCES L. DUFFY,

called as a witness by and on behalf of the government, having been first duly sworn, was examined and testified as follows:

The Clerk: Will you state your name?

The Witness: Frances L. Duffy.

The Clerk: Take the stand.

Direct Examination

By Mr. Goldschein:

Q. This is Miss Frances L. Duffy?

A. Yes, sir.

Q. Miss Duffy, on November 3, 1948, were you the official court reporter before this grand jury?

A. I was.

The Court: And had taken your oath?

The Witness: Yes, sir. I took it that day, your Honor.

(Testimony of Frances L. Duffy.)

The Court: Very well.

Q. (By Mr. Goldschein): Were you present when the witness Henry Steinberg was recalled before the grand jury? A. Yes, sir.

Q. Did you take down in shorthand the questions propounded to him and the answers that he gave?

A. I did.

Q. Will you please read to the court the statement made to him, if any, and the questions propounded and the answers he gave.

A. Yes, sir. Immediately after he was in the room Mr. Goldschein said:

“Mr. Goldschein: Henry Steinberg, recalled.

“Mr. Steinberg, this grand jury is not investigating you. They are making an investigation with reference to certain Federal employees who made a false statement to a Federal agency with reference to their affiliation with certain organizations, clubs or groups of people.

“Q. (By Mr. Goldschein): Now, you are not employed by the Federal government, are you?

“A. At the present time, no.

“Q. Were you ever employed by the Federal government? A. At one time.

“Q. Were you at any time ever employed by the Federal government?

“A. I was, yes, sir.

“Q. Now, to the best——

“A. (Continued): I was employed as a soldier.

“Q. In a civilian employment?

“A. As a soldier, 18 months in the Army.

(Testimony of Frances L. Duffy.)

“Q. Did you ever have any civilian employment for the Federal government?

“A. No, I did not.

“Q. To the best of your recollection, are you personally acquainted with any employees of the Federal government?

“A. To the best of my knowledge, I am not.

“Q. And do you know Dorothy Healey?

“A. I refuse to answer that question upon the basis that I may incriminate myself.

“Q. Do you know her business or home address?

“A. I refuse to answer that question on the basis I may incriminate myself.

“Q. Do you know her occupation?

“A. I refuse to answer that question on the same basis.

“Q. Do you know where she can be located?

“A. No, I do not.

“Q. Do you know whether Dorothy Healey is married?

“A. I refuse to answer that question on the basis I may incriminate myself.

“Q. Do you know what her husband's occupation is, if she is married?

“A. I refuse to answer that, on the basis that I may incriminate myself.

“Q. Well, if she is married, do you know her husband's name?

“A. I refuse to answer that on the basis that I may incriminate myself.

“Q. All right, we will recess you until 11:00

(Testimony of Frances L. Duffy.)

o'clock tomorrow morning, Mr. Steinberg. You will report back here? A. Yes, sir.

The Court: Cross-examine?

The Witness: I am sorry. I think there was another hearing. I think he was back.

No, that was just when you told him to report at 1:30.

Mr. Margolis: No cross-examination.

* * * *

Mr. Goldschein: We insist, may it please the court, that there is no self-incrimination involved in the answers that he may give to these questions. We respectfully ask the court to hear the witness privately to determine whether or not the answers to the questions will tend to incriminate him.

The Court: May the same order be made here concerning the record and the objections?

Mr. Margolis: First of all, if your Honor please, I would like to make a motion for a continuance on the grounds [212] previously stated with respect to the matter in re Ben Dobbs.

The Court: Very well. The motion is denied.

Mr. Margolis: We now ask for a similar order incorporating in this case the entire record, including evidence, exhibits, offers of proof, stipulations and all other matters and things, including argument, which have been made a part of the record in the Ben Dobbs case and including, of course, the earlier record incorporated in the Dobbs case.

The Court: That will be the Doran, the Bock, Dobbs, Kasinowitz records which are all included in

this. In the Doran case all of the previous record was incorporated in that case.

Mr. Margolis: That is right.

The Court: What was in that case is in this so it is incorporated by incorporation.

Mr. Margolis: There are several incorporations.

The Court: Yes.

Mr. Margolis: And I think it was understood in each case that the incorporation, so to speak, would be carried forward.

The Court: That is my understanding, at least that is what I had in mind in connection with making the order, that everything that has been offered on behalf of any witness or received will be offered or received on behalf of this witness, subject to all of the objections made of record heretofore [213] by the government.

Mr. Margolis: Yes, your Honor.

The Court: Very well.

Does the witness desire to make a statement privately?

Mr. Steinberg: Yes.

The Court: Very well. We will recess to chambers with the Clerk, the reporter and the bailiff.

STATEMENT OF WITNESS STEINBERG

(The following proceedings were had in chambers, as follows:)

The Court: All right, Mr. Steinberg. Do you wish to make a statement?

Mr. Steinberg: Your Honor, I am aware,

through reading the newspapers, of efforts on the part of the government to accuse, to charge the leadership of the Communist Party with overthrowing the government by force and violence for violation of the Smith Act, as well as the attempts on the part of the government to deport people because of membership in the Communist Party, and I feel that tying myself in in any way in answering these questions would tend to incriminate me.

The Court: Now you mentioned deportation. You are a native-born citizen?

Mr. Steinberg: Yes, sir.

The Court: I mean, you have never taken out citizenship in any other country?

Mr. Steinberg: No, sir.

The Court: Do you have some personal fear of deportation if you might answer these questions?

Mr. Steinberg: Not at all, sir.

The Court: Do you have any other statement?

Mr. Steinberg: That is all.

The Court: Very well. We will reconvene in the courtroom.

(The following proceedings were resumed in open court:)

The Court: Usual stipulation concerning the grand jury?

Mr. Margolis: Yes, your Honor.

Mr. Goldschein: Yes, your Honor.

The Court: The same order concerning privacy here will obtain to Mr. Steinberg as to the others.

Mr. Steinberg has made his statement to me pri-

vately in chambers and what he has said has shown no other or different reason for refusing to answer the questions on the ground they might incriminate him or tend to incriminate him than that heretofore urged in his behalf by his counsel.

For that reason he will be ordered and directed to answer the following questions—Mr. Steinberg?

Mr. Steinberg: Present.

The Court: You will return to the grand jury and answer these questions:

Do you know Dorothy Healey?

Do you know her business or home address?

Do you know her occupation?

He answered the question where she can be located. His answer was "no."

Do you know whether or not she is married?

Do you know her husband's occupation?

Do you know her husband's name?

Do you understand the order?

Mr. Steinberg: Yes, sir.

The Court: Very well.

* * * *

Mr. Goldschein: I have some petitions, may it please the court.

(The documents referred to were passed to the court.)

The Court: Mr. Goldschein has handed me a motion for the issuance of a bench warrant for the arrest of Merle Brodsky, a witness. There appear to be a series of them, Merle Brodsky, Max Ap-

pelman, George Victor Blaine, Ruth Rose Utrecht and Elizabeth Glenn.

Mr. Margolis, are you representing any of those parties?

Mr. Margolis: We have not been retained by them.

The Court: Very well.

You may have your bench warrants for Merle Brodsky, Max Appelman, George Victor Blaine, Ruth Rose Utrecht, and Elizabeth Glenn. Bond is fixed in the sum of \$1000 each.

* * * *

[Endorsed]: Filed April 6, 1949.

In the District Court of the United States in and for
the Southern District of California,
Central Division

Honorable Peirson M. Hall, Judge presiding.

In Re:

No. 8789-PH—LILLIAN ADELE DORAN

No. 8827-PH—PHILLIP BOCK

No. 8839-PH—IRVING CARESS

No. 8842-PH—ROBERT BLAIR

No. 8874-PH—MERLE BRODSKY

No. 9321-PH—FRANK SPECTOR

REPORTER'S TRANSCRIPT OF
PROCEEDINGS

Los Angeles, California;
March 3, 1949 [1*]

Appearances: For the Government: James M. Carter, United States Attorney, Los Angeles 12, California. For the Respondents: Margolis & McTernan, 112 West Ninth Street, Los Angeles 15, California; by John T. McTernan, Esq.; and Esther Shandler. [2]

The Court: Mr. Carter, do you have at matter?

Mr. Carter: If the Court please, the Grand Jury is here present. It desires to present to the Court six persons who have refused to answer questions before the Grand Jury after having been previously ordered to answer by the Court. They make

* Page numbering appearing at foot of page of original certified Reporter's Transcript.

the presentment here in the nature of a civil contempt against Lillian Doran, Philip Bock, Merle Brodsky, Frank Spector, Robert Blair and Irving Caress.

The Grand Jury is present.

* * * *

[4]

The Court: Very well. We will now proceed in contempt. Call the roll of the Grand Jury, Mr. Clerk.

(Roll call of the Grand Jury by the Clerk.)

The Clerk: A quorum is present, your Honor.

The Court: Mr. Foreman, you heard the statement of Mr. Carter, the United States Attorney. A quorum of the Grand Jury is present. Is it the desire of the Grand Jury to proceed with the presentment at this time?

Foreman Ahlswede: Yes, it is, your Honor.

The Court: Very well. Mr. Carter?

Mr. Carter: Call Miss Duffy.

The Court: Are these the same witnesses which I had at the last hearing?

Mr. Carter: Four of them are—Spector, Brodsky, Blair and Caress.

The Court: Is the transcript prepared, Mr. Reporter?

The Reporter: Yes, your Honor.

The Court: The witnesses you designated are Caress, Blair, Brodsky and Spector?

Mr. Carter: That is correct, and two others, Philip Bock and Lillian Doran. There six altogether. [5]

The Court: Is Lillian Doran present?

Mrs. Doran: Yes.

The Court: Is Phillip Bock present?

Mr. Bock: Yes.

The Court: Is Frank Spector here?

Mr. Spector: Here.

The Court: Is Merle Brodsky here?

Mr. Brodsky: Here.

The Court: Mr. Robert Blair?

Mr. Blair: Here.

The Court: Mr. Irving Caress?

Mr. Caress: Here.

The Court: Very well. Proceed.

Mr. Carter: For the record, I will first call attention to the Reporter's Transcript of the proceedings of February 23, 1949, in this Court, beginning at page 127 where the Court made an order that certain questions be answered.

The Court: What transcript?

Mr. Carter: The Reporter's Transcript of February 18, and 23, 1949, page 127, where the order appears as to four of the witnesses, namely, Spector, Brodsky, Blair and Caress.

I will call Miss Duffy.

FRANCES L. DUFFY

being called as a witness by and in behalf of the government having been first duly sworn, was examined and testified as [6] follows:

The Clerk: Will you state your name for the record?

The Witness: Frances L. Duffy.

The Clerk: Take the stand, please.

(Testimony of Frances L. Duffy.)

Direct Examination

By Mr. Carter:

Q. Miss Duffy, you are the official court reporter servicing the Grand Jury? A. Yes, sir.

Q. Were you present this morning at about 9:30 in the Grand Jury room in this building?

A. I was.

Q. And you were sworn as a reporter to take the proceedings of the Grand Jury?

A. I have been; yes, sir.

Q. Did you take the proceedings this morning before the Grand Jury? A. I did.

Q. Will you read your transcript beginning with the opening of the proceedings this morning before the Grand Jury?

The Court: Was a witness called?

Mr. Carter: Yes.

The Court: Which witness?

The Witness: Mr. Spector was the first witness. [7]

By Mr. Carter:

Q. Let me ask you this question generally then: was Frank Spector called as a witness this morning?

A. Yes, sir.

Q. Was Merle Brodsky called as a witness?

A. Yes, sir.

Q. Was Robert Blair called as a witness?

A. Yes, sir.

Q. Was Irving Caress called as a witness?

A. Yes, sir.

Q. And your notes indicate that? A. Yes.

(Testimony of Frances L. Duffy.)

The Court: Lillian Doran?

Mr. Carter: She was not there this morning. I have another transcript on that.

Q. Do your notes show the testimony of these four witnesses this morning before the Grand Jury?

A. They do.

The Court: That is, Caress, Blair, Brodsky and Spector?

Mr. Carter: That is correct.

The Court: Very well.

The Witness: Mr. Carter said, bring Mr. Spector in first and Mr. Spector came in and was questions:

“By Mr. Carter:

“Q. Mr. Spector, you have been previously sworn [8] before this Grand Jury, have you not?

“A. Yes.

“Q. Just take a chair there.

“Q. Your full name is what?

“A. Frank E. Spector.

“Q. Mr. Spector, you were in the courtroom of Judge Hall on February 23rd, were you not, when he made an order concerning certain questions you should answer? A. I was.

“Q. And you heard him make that order?

“A. I did.

“Q. You were directed by him to appear before this Grand Jury and answer certain questions. I am referring now to page 127 of the Reporter's Transcript of February 23rd—starting in on February 18th and winding up on February 23rd—in which the

(Testimony of Frances L. Duffy.)

order in your presence, did he not, that you answer certain questions before this Grand Jury?

“A. That is correct.

“Mr. Carter: I will read from page 128 of the record, from the Reporter’s Transcript of February 18 and 23, line 18:

“ ‘The Court: Mr. Caress, you are ordered and directed to be and appear before the Grand Jury of this district in the office in the Federal Building on Thursday, March 3rd, at 9:30 o’clock in the morning of that day, and at that time and place to answer the following questions:’

“Do you remember that order?

“The Witness: That is right.

“Mr. Carter: Do you remember the questions the Court ordered you to answer?

“The Witness: Not specifically; in general I remember them.

“Mr. Carter: I will read them to you:

“ ‘Can you tell us the table of organization of the Communist Party of Los Angeles County?’ [12]

“The Witness: That is the question?

“Mr. Carter: That is the question.

“The Witness: I have to refuse to answer that on the same grounds I refused previously.

“Q. By Mr. Carter: What are those?

“A. On the ground it might tend to incriminate me, and is an inquiry into my political beliefs based upon the First and Fifth Amendments.

“Q. ‘Do you know who in the Los Angeles County

(Testimony of Frances L. Duffy.)

Communist Party setup has knowledge of or is in charge of membership?’

“A. I have to refuse to answer on the same ground.

“Q. ‘Do you know Dorothy Healey?’

“A. I have to refuse to answer on the same ground.

“Q. ‘Do you know where she lives?’

“A. I refuse to answer on the same ground.

“Q. ‘Do you know where she can be found or located?’

“A. Same answer.

“Q. ‘Do you know her husband’s name?’

“A. Same answer.

“Q. ‘Do you know his occupation?’

“A. Same answer. [13]

“Q. ‘Do you know any person in this county who advocates the overthrow of the government of the United States by force and violence?’

“A. Same answer.

“Q. ‘Do you know any organization in this county which has as its purpose the overthrow of the government by force and violence?’

“A. Same answer.

“Q. And you make these refusals, do you, having in mind that the Court ordered you to answer those questions?

“A. I have in mind that these questions are an inquiry that violates my rights under the amendments to the Constitution, and violate my rights under the First and Fifth Amendments to the Constitution.

(Testimony of Frances L. Duffy.)

"Q. You also have in mind that the Court ordered you to answer those questions?

"A. I have in mind that I think the Court was unjustified in ordering it, and that it was an illegal order.

"Mr. Carter: Stand outside."

Mr. Carter: That is the presentment against Irving Caress.

Q. Now will you read the record taken this morning as to Mr. Brodsky? [14]

A. Yes.

"By Mr. Carter:

"Q. Your name is Merle Brodsky?

"A. That is right.

"Q. Mr. Brodsky, you were in court on February 23rd, in the courtroom of Judge Peirson Hall, were you not? "A. I was.

"Q. When he made an order that you answer certain questions?

"A. I believe that was the day.

"Q. Reading from page 130 of the reporter's transcript of proceedings for the dates of February 18 and 23, 1949, I will read you the judge's orders:

" 'Mr. Brodsky, you are now ordered and directed to be and appear before the grand jury of this district at its place of meeting on the sixth floor of this building on Thursday, March 3rd, at 9:30 o'clock in the morning of that day, and then and there make answer to the following questions.'

"Do you recall he made an order to that effect?

"A. I recall.

"Q. I will now read you and ask you again those

(Testimony of Frances L. Duffy.)

questions which he ordered you to answer:

“ ‘Do you know and can you tell us the table of [15] organization of the Communist Party of Los Angeles County?’

“A. I refuse to answer that question on the ground that it might incriminate me and furthermore I believe it is an inquiry into my political beliefs.

“Q. ‘Do you know who in the Communist Party in Los Angeles County is in charge of membership or membership rolls?’

“A. I refuse to answer on the same ground.

“Q. ‘Do you know Dorothy Healy?’

“A. I refuse to answer on the same ground.

“Q. ‘Do you know what her business or residence address is, or where she can be located?’

“A. I refuse to answer on the same ground.

“Q. ‘Do you know her husband’s name?’

“A. I refuse to answer on the same ground.

“Q. ‘Do you know his—that is, her husband’s—business or occupation?’

“A. I refuse to answer on the same ground.

“Q. ‘Do you know what her business or occupation is?’

“A. I refuse to answer on the same ground.

“Q. ‘Do you know any person in the County of Los Angeles who advocates the overthrow of the government [16] of the United States by force and violence?’

“A. I refuse to answer on the same ground.

“Q. ‘Do you know an organization in the County of Los Angeles that has for its purpose the overthrow

(Testimony of Frances L. Duffy.)

of the United States government by force and violence?’

“A. I refuse to answer on the same ground.

“Q. ‘Who are you an organizer for?’

“A. I refuse to answer on the same ground.

“Q. Now, in refusing to answer those questions, Mr. Brodsky, do you have in mind that the court ordered you to answer them?

“A. I have refused to answer the questions on the ground that I think I answered before.

“Q. But you are familiar with the fact that these are the questions the court ordered you to answer?

“A. I am familiar with that, yes.

“Mr. Carter: Will you stand aside?”

Mr. Carter: That is the presentment against against Merle Brodsky.

Q. Will you now read the transcript as it concerns Mr. Robert Blair? A. Yes.

“By Mr. Carter: [17]

“Q. Your full name is Robert Blair?

“A. That is right.

“Q. Mr. Blair, have a chair. You were previously sworn to testify before this grand jury, were you not?

“A. I was.

“Q. Mr. Blair, were you in the courtroom of Judge Peirson Hall on February 23, 1949, when he made an order that you should answer certain questions? “A. I was.

“Q. From page 131 of the reporter’s transcript for the dates of February 18 and 23, I will read you the court’s order:

“ ‘Mr. Blair, you are ordered and directed to be

(Testimony of Frances L. Duffy.)

and appear before the Federal grand jury of this district in its office on the sixth floor of this building on March 3rd at the hour of 9:30 o'clock in the morning of that day and then and there make answer to the following questions.'

"The court then listed certain questions, which I will now re-ask of you:

" 'Do you know the table of organization or who the officials of the Communist Party are?'

"A. I refuse to answer that question on the [18] ground I previously stated in answer to that question.

"Q. Will you state your ground again, so we have it for the record.

"A. My grounds are, first, this would be a possible self-incrimination on the basis of the Fifth Amendment of the Constitution.

"Likewise, I refuse to answer the question on the ground it is an invasion of my constitutional rights, because it invades my right of political belief and association.

"Q. You mentioned your ground of self-incrimination, did you? "A. Yes.

"Q. 'Do you know who or what officer of the Communist Party of Los Angeles County is in charge of membership or has knowledge of the membership rolls in this county?'

"A. I refuse to answer that on the same grounds.

"Q. 'Do you know Dorothy Healy?'

"A. I repeat the same answer.

"Q. You mean you refuse—

"A. I refuse again to answer.

(Testimony of Frances L. Duffy.)

“Q. ‘Do you know where she can be located or can be found?’ [19]

“A. I refuse to answer that question, likewise, on the grounds of self-incrimination and the right to my own political belief and association.

“Q. ‘Do you know her business or home address?’

“A. Same answer.

“Q. ‘Do you know her business or occupation?’

“A. I repeat the same answer.

“Q. ‘Do you know what her husband’s name is?’

“A. I refuse to answer that, likewise, on the same grounds.

“Q. ‘Do you know his occupation, her husband’s occupation?’

“A. I refuse to answer that question on the same ground as given.

“Q. ‘Have you seen Dorothy Healy recently?’

“A. I refuse to answer that question on the same ground.

“Q. ‘Do you know any person in the County of Los Angeles who advocates the overthrow of the government of the United States by force and violence?’

“A. I refuse to answer that question, likewise, on the same ground.

“Q. ‘Do you know any organization in the County of Los Angeles which has the announced purpose of [20] the overthrow of the government of the United States by force and violence?’

“A. Same answer.

“Q. ‘Do you know Elizabeth Glenn?’

“A. Same answer.

(Testimony of Frances L. Duffy.)

“Q. ‘Do you know Mrs. Houdek?’

“A. Same answer.

“Q. In refusing to answer these questions, you have in mind, have you not, that these are the questions which the court ordered you to answer?

“A. I may be mistaken, but it seems to me that there are one or two extra questions there in connection with the—I think the last three or four questions, you turned around the question, ‘Do you know an organization that advocates the overthrow—’

“Q. You recall those questions. Do you mean the ones following that?

“A. I thought it was just one there.

“Q. No, I am reading from the transcript, page 132, and the questions beginning at line 19 are:

“‘Have you seen Dorothy Healy recently?’ You remember that?

“A. Yes. It was just the last couple.

“Q. The next was: [21]

“‘Q. Do you know any person in the County of Los Angeles who advocates the overthrow of the government of the United States by force and violence?’ The next question was:

“‘Q. Do you know any organization in the County of Los Angeles which has the announced purpose of the overthrow of the government of the United States by force and violence?’ And then the last two are:

“‘Q. Do you know Elizabeth Glenn?’ and ‘Q. Do you know Mrs. Houdek?’ That is on page 133.

“You refuse to answer all of these questions?

“A. I do.

“Mr. Carter: Will you remain outside.”

Mr. Carter: That is the presentment against Robert Blair.

Q. Now as to Phillip Bock and Lillian Doran. Did you report proceedings before the grand jury on January 12, 1949, Miss Duffy?

A. Yes, I did.

The Court: Let us see. Is this a presentment against Bock and Doran for contempt of or is this a presentment to get them ordered to answer questions?

Mr. Carter: For contempt, because they went back and again refused to answer. [22]

The Court: When were they ordered to answer the questions?

Mr. Carter: On November 4, 1948, page 122 of the transcript of that day, as to Bock. And Doran, transcript of the same day, November 4, 1948, page 93.

The Court: What is it as to Bock, page what?

Mr. Carter: Page 122.

The Court: And as to Doran?

Mr. Carter: Page 93.

The Court: Very well. You are proceeding now against whom?

Mr. Carter: First Lillian Doran.

The Court: Very well.

By Mr. Carter:

Q. Did you report the proceedings before this grand jury on January 12, 1949? A. I did.

Q. I show you an original and a copy of transcript prepared concerning Lillian Doran on that day. Can you tell me what those are?

(Testimony of Frances L. Duffy.)

A. This is the transcript of my notes of the questions asked of Lillian Doran and the answers given by her on that day, and a carbon copy of the same.

Q. I hand you the copy, which is a duplicate of the original, is it not? [23] A. Yes, sir.

Q. And ask you to refer to page 7 thereon, line 16. Now at that time was Lillian Doran the witness before the grand jury? A. Yes, sir.

Q. And she had been sworn, had she?

A. Yes, she was sworn.

Q. Will you read the transcript beginning at page 7, line 16? A. Yes.

“Q. (By Mr. Carter): Do you recall that when you were in the courtroom—”

Q. These questions were put to Lillian Doran, were they not? A. Yes, they were.

Q. And the answers were given by her?

A. Yes, sir.

Q. All right. Continue.

A. “Q. Do you recall that when you were in the courtroom of Judge Hall on November 4, 1948—for the record, page 93 of the transcript of that date—the judge stated as follows:

“‘For that reason the order of the court will be that the witness is ordered and directed to answer the following questions—and in that connection [24] I would like also to observe that Government’s Exhibit 1, the transcript of the testimony before the grand jury, is entitled “In the Matter of: Loyalty of Government Employees.” The questions are:

“And these are the questions Judge Hall ordered you to answer, and I am going to read these questions to you now, one at a time.

(Testimony of Frances L. Duffy.)

"I will ask you, first, you recall the judge ordered you to answer certain questions? "A. Yes.

"Q. These are the questions:

" 'Do you know Ned Sparks?'

"I am asking you that question.

"A. I refuse to answer on the ground it might tend to incriminate me.

"Q. 'Do you have any occupation other than that of housewife?'

"A. I did have. I am a graduate nurse. I haven't worked for two or three years.

"Q. The question is: 'Do you have,' at the time the court asked you the question, 'any occupation other than that of housewife?'" "A. No.

"Q. 'Do you Know Dorothy Healy?' [25]

"A. Do you want me to repeat my answer?

"Q. I am asking you the question.

"A. I refuse to answer on the ground it might tend to incriminate me.

"Q. 'Do you know her business or home address?'

"A. I refuse to answer on the ground it might tend to incriminate me.

"Q. 'Do you know her occupation?'

"A. I refuse to answer on the ground it might tend to incriminate me.

"Q. 'Do you know where she can be located?'

"A. I refuse to answer on the ground it might tend to incriminate me.

"Q. 'Do you know whether Dorothy Healy is married?'

"A. I refuse to answer that question on the ground it might tend to incriminate me.

(Testimony of Frances L. Duffy.)

“Q. ‘Do you know her husband’s name?’

“A. I refuse to answer that question on the ground it might tend to incriminate me.

“Q. ‘Do you know his occupation?’

“A. I refuse to answer on the ground it might tend to incriminate me.

“Q. ‘If you do know his occupation, will you [26] tell us what his occupation is?’

“A. I refuse to answer on the grounds it might tend to incriminate me.

“Q. And you make those answers, having in mind that the court ordered you to answer those questions? “A. Yes.”

Mr. Carter: That is sufficient. That is the presentment as to Lillian Doran.

The Court: Very well.

By Mr. Carter:

Q. Now on that same day before the grand jury, January 12, 1949, was Phillip Bock a witness?

A. Yes, he was.

Q. I show you the original and a copy of a transcript apparently made by you. Tell us what that is.

A. That is a transcript of my notes of the questions asked by you of Mr. Bock and the answers given by him.

Q. Will you take the copy, turn to page 9, line 11. Now at that time was Mr. Bock on the witness stand? A. Yes, he was.

Q. Had he been sworn? A. He had.

Q. Will you begin reading at page 9, line 11—at line 8, rather. [27] A. Yes.

(Testimony of Frances L. Duffy.)

“Q. Well, were you ordered by Judge Hall to answer some questions? “A. Yes, I was.

“Q. Do you recall being in Judge Hall’s court on November 4, 1948, at which time the question of your claim of privilege was gone into, and the court made an order that you answer certain questions?

“A. I don’t recall the date and time, but around that time I was there, I recall.

“Mr. Carter: For the record, I refer to page 122 of the transcript of the proceedings of the District Court on November 4, 1948.

“I will read to you Judge Hall’s statement from that transcript:

“ ‘The Court: I have heard Mr. Bock’s statement in chambers—incidentally, I ordered, not only as to his statement as to the previous witness’ statement, that they remain private and confidential and secret unless and until they are requested either by the witness or counsel.

“ ‘The witness has stated his reasons, some of them in addition to those that are by counsel, but I cannot see anything in them which would tend to [28] show that answering questions which are now pending would incriminate or tend to incriminate, and for that reason I must order the witness to answer the questions.

“ ‘It will, therefore, be the order of the court that the witness Phillip Bock is ordered and directed to answer the following questions:

“ ‘Do you know Dorothy Healy?

“ ‘Do you know the business and home address or home address of Dorothy Healy?

(Testimony of Frances L. Duffy.)

“ ‘Do you know the occupation of Dorothy Healy?

“ ‘Do you know whether or not Dorothy Healy is married?

“ ‘Do you know her husband’s name?

“ ‘Do you know his occupation?

“ ‘What is his occupation?

“ ‘Do you understand the order, Mr. Bock?

“ ‘Mr. Bock: Yes, sir.

“ ‘The Court: Very well.’

“By Mr. Carter:

“Q. Do you recall that?

“A. Yes, I do.

“Q. Now, I want to give you an opportunity to comply with that order of the court, and his order that you answer these questions, and I will ask you [29] the same questions in the same order in which they appear in his order.

“Do you know Dorothy Healy?

“A. I refuse to answer that question on the ground it might tend to incriminate me.

“Q. Do you know the business and home address of Dorothy Healy?

“A. I refuse to answer that question on the ground it might tend to incriminate me.

“Q. Do you know the occupation of Dorothy Healy?

“A. I refused to answer that question on the ground it might tend to incriminate me.

“Q. Do you know whether or not Dorothy Healy is married?

“A. I refuse to answer that question on the ground it might tend to incriminate me.

(Testimony of Frances L. Duffy.)

“Q. Do you know her husband’s name?

“A. I refuse to answer that question on the ground it might tend to incriminate me.

“Q. Do you know his occupation?

“A. I refuse to answer that question on the ground it might tend to incriminate me.

“Q. What is his occupation?

“A. I refuse to answer that question on the grounds it might tend to incriminate me.” [30]

Mr. Carter: That is sufficient.

That is the presentment against Phillip Bock.

The Court: The grand jury rests?

Mr. Carter: The grand jury rests.

It is the opinion of the Government that this is a flagrant disregard of the court’s orders to answer questions which were, many of them, preliminary in their nature which stymied the inquiry of the grand jury at the threshold of this inquiry.

The Court: Mr. McTernan?

Mr. McTernan: Yes, your Honor.

The Court: Are you counsel for all of these witnesses, Mr. McTernan?

Mr. McTernan: I have entered an appearance before, your Honor. I would like at this time, if it is needed for this proceeding, to enter an appearance by Miss Esther Shandler and myself for all of the persons against whom presentments have been made, as well as by the firm of Margolis & McTernan.

The Court: To keep the record straight, Mr. Caress, you desire that Miss Shandler and Mr. McTernan act as your counsel in this proceeding?

Mr. Caress: Yes, sir.

(Testimony of Frances L. Duffy.)

The Court: Mr. Blair, what is your desire?

Mr. Blair: I do. [31]

The Court: Mr. Brodsky?

Mr. Brodsky: I do.

The Court: Mr. Spector?

Mr. Spector: Yes.

The Court: Is that your desire?

Mr. Spector: Indeed.

The Court: Mr. Bock?

Mr. Bock: Yes.

The Court: And Miss Doran, is it?

Mrs. Doran: Yes.

The Court: Should we address you as Miss or Mrs.?

Mrs. Doran: Mrs.

The Court: Mrs.?

Mrs. Doran: Yes.

The Court: And what is the name?

Mrs. Doran: D-o-r-a-n.

The Court: Thank you.

Very well.

Mr. Carter: May the record show that Mr. McTernan, although his appearance has just been entered, has previously appeared as counsel for these witnesses?

The Court: His appearance has just been entered in this proceeding, which is a separate proceeding from the previous proceedings.

Mr. McTernan: At this time, your Honor, we move for a [32] continuance of all of the matters which have been presented to your Honor on the following grounds:

(Testimony of Frances L. Duffy.)

First, that the issues presented here this morning are no different in kind or in nature from the issues involved in the proceedings on October 25th, which were proceedings in civil contempt involving many of the same questions involved here, and the questions are essentially no different, so far as the legal issues raised, from the questions involved in the proceedings in criminal contempt against the defendant Dobbs, Kasinowitz and Steinberg, and that there is no point in proceeding to an adjudication at this time while the basic questions as to the power of the government to ask these questions—

The Court: Do you want to cross-examine this lady?

Mr. McTernan: I don't think so, your Honor. Before engaging in the trial I am trying to ask for a continuance of the trial. I will be glad to excuse Miss Duffy subject to call in the event it turns up in the course of the trial that I may have some questions.

The Court: I have denied your motion for a continuance at the beginning.

Mr. McTernan: I didn't know that it had been denied.

The Court: You stood right over there and asked for a continuance. I said we would proceed and I asked the foreman of the grand jury if he desired to proceed at this time, [33] so we are proceeding with the government's presentment.

Now do you wish to cross-examine this witness on the government's presentment of these witnesses?

Mr. McTernan: No, I do not.

The Court: You may step down and be excused.

(Witness excused.)

The Court: Very well.

Mr. McTernan: My recollection, your Honor, is that I have not heretofore made a motion for a continuance in this matter. You asked me how long I thought it would take and I said I didn't know because I wasn't prepared, and I intended to indicate in greater detail my lack of preparation in the course of making this motion.

The Court: Proceed.

Mr. McTernan: Since the issues raised by the presentment here are the same as those now on appeal before the United States Court of Appeals in the appeal from the court's judgment entered on October 25th, there is no end to be served by a further and repetitive and cumulative adjudication of the legal issues presented here.

Furthermore, it simply subjects these witnesses and these defendants to further harassment and annoyance at the hands of the government in the course of their illegal and improper inquiry, all of which issues are before the Court of Appeals and should be determined before this court goes [34] any further.

Secondly, counsel for these witnesses has not had an adequate time to prepare in this matter. I was advised by a letter from Mr. Carter, which was received in my office during the day on March 1st, that he intended to proceed in contempt proceedings against these people. Your Honor knows—

The Court: What would you need to prepare, counsel?

Mr. McTernan: I was just about to tell you that, your Honor.

Your Honor knows from our other proceedings that in order to prepare our record we need to subpoena witnesses who are not only officers of this court but also the Attorney General of the United States. It would have been a futile and idle procedure to attempt to subpoena the Attorney General of the United States to be here on March 3rd, having been notified of the goevrnment's intention to institute such a proceeding only during the day on March 1st.

We, therefore, request that we be given a reasonable continuance in order to subpoena the necessary witnesses.

The Court: What witnesses?

Mr. McTernan: Specifically the Attorney General of the United States, the Clerk of this court and the jury commissioner of this court.

The Court: The Clerk and the jury commissioner are here. I do not know whether we have a jury commissioner now or not. [35] I think he resigned.

The Clerk: I don't think so, your Honor.

The Court: I do not know.

Have you completed your statement?

Mr. McTernan: I wanted to also say, your Honor, that there have been a number of proceedings before this court involving the same or related legal problems, the transcripts are now rather voluminous, the exhibits are numerous, and we have been attempting to collate the material and prepare for this proceeding and we haven't been able to complete that process

and we would like more time to be able to get our record completely straight so as to avoid duplication but at the same time being sure that our record was complete.

For all those reasons we ask for a reasonable continuance.

The Court: Do you wish to be heard, Mr. Carter?

Mr. Carter: The questions which would be raised by these witnesses have already been passed on by this court. I take it that the Clerk and jury commissioner would be witnesses to the question as to the composition of this grand jury. This court has ruled that a witness cannot question the composition of the grand jury.

So far as the appearance of the Attorney General is concerned, that has already been ruled on.

In addition, I might say that no showing has been made [36] that counsel has not had an opportunity to subpoena the Clerk and the jury commissioner here. No proper showing has been made.

Mr. McTernan: Your Honor, I misstated my request when I summarized my remarks. My basic request is that these proceedings be held in abeyance until such time as the appeal before the United States Court of Appeals is determined, since the legal questions presented here are no different from those and the whole question of the claim of privilege is no different—

The Court: If they are no different, why do you need time to prepare?

Mr. McTernan: I need time to prepare my record, your Honor. I anticipate that your Honor's rulings will be substantially the same as they have been in

the past, but unless my record is straight, so far as the appearance of witnesses and the asking of questions is concerned, the record of these people may not be complete and they may be substantially prejudiced.

The Court: You are satisfied that your record is complete in the other cases, are you not?

Mr. McTernan: Well, no, your Honor. As a matter of fact, one of the grounds of appeal was that your Honor did not give us sufficient time to prepare our record or obtain evidence and that there was a substantial denial of due process. [38]

The Court: You are talking about making a record, are you not?

Mr. McTernan: Yes, I am talking about making a record.

The Court: Very well. The motion for a continuance is denied.

As to whether or not all of the issues which are involved in this case are presented in the case which is now pending on appeal, as I have heretofore indicated, there are certain questions which are before the Circuit of Appeals which were directed to the witnesses and they were directed to answer them. Each question has to stand on its own footing.

In so far as not having adequate time to prepare, the questions were asked of Lillian Doran and Phillip Bock back on November 4, 1948. The instructions were given to Irving Caress, Brodsky, Blair and Spector on February 23rd. They were directed to be and appear before the grand jury on March 3rd.

At that time each of the parties had the same counsel. On each of those hearings all of the ques-

tions of the materiality of the questions, as well as whether or not the answers would incriminate the witnesses, as well as whether or not they had a right were gone into and ruled upon. The witnesses were to refuse to answer them on the ground that it might violate their rights under the First Amendment, [38] were gone into and ruled upon. The witnesses were ordered to appear on March 3rd. I am satisfied that the advice to the witnesses not to answer the questions was not suddenly thought of this morning and given by counsel to the witnesses, but that counsel has known, as well as the witnesses have known, as indicated by their attitude and, as I recall the statement by counsel in this courtroom, that he would advise the witnesses not to answer the questions.

* * * *

[39]

Mr. McTernan: If the court please, the grounds upon which we defend against the presentment made here this morning are as follows:

That the proceeding and all of the proceedings which antedated and in which this proceeding culminates constitute an abuse of process of the court.

Secondly, that in this proceeding, and in all proceedings leading up to this proceeding, these witnesses have been denied due process of law in that they have been denied equal protection of the law.

That the grand jury which made the presentment was improperly selected and is an illegal and void grand jury.

That the grand jury is without power to inquire into the matters involved in the presentment and the court is [40] without power to compel answers to questions directed to such matters.

And, finally, that the answers to the questions might tend to incriminate each of the witnesses.

The Court: The grand jury is without power to inquire and the court is without power to compel? You did not state your ground.

Mr. McTernan: I thought I said, your Honor, that the grand jury is without power to inquire into the matters involved in the presentment and the court is without power to compel answers to the questions.

The Court: But you did not state your ground. Why is it without power?

Mr. McTernan: I am simply giving you a summary of the various points, your Honor.

The Court: Very well.

Mr. McTernan: Now taking these up individually, the first point is the abuse of process.

With reference to the witness Bock, we offer all of the matters and things which were presented to the court and received in evidence in connection with the criminal presentments against the defendants Dobbs, Kasinowitz and Steinberg.

In this connection, your Honor. I think the facts are uncontradicted. Bock was one of the ten persons who was adjudicated in the civil contempt the night of October 25, [41] and committed to the county jail pursuant to this court's order, was released on the stay ordered by Judge Denman of the United States Court of Appeals on November 3rd, and was subpoenaed to reappear forthwith instanter before the grand jury as he left the jail house.

I think we can agree on those facts, can we not, Mr. Carter?

Mr. Carter: I think they all show in the record.

Mr. McTernan: They don't show in this record.

Mr. Carter: Whatever appears from the previous record.

The Court: I take it, Mr. McTernan, that probably in order that nothing will be missed in this record that I might suggest a stipulation that all of the matters and things heretofore offered in opposition to the order of the court directing these or any of the other witnesses to answer the questions, in opposition to the motion for civil contempt, in opposition and in defense of the charge of criminal contempt by those designated witnesses, and in opposition to the order of the court directed to these specific witnesses to answer these specific questions heretofore made, may be deemed to be before the court and a part of the record with the same force and effect as if it were here reintroduced or offered, if it is in evidence, or presented, if it was argument or law.

Is that stipulation agreeable? [42]

Mr. Carter: That is satisfactory with the government.

Mr. McTernan: May I suggest one addition, your Honor, because I am not sure it is included within your Honor's language, and that it include the record adduced in connection with the government's motion to compel Bock and Dorran to answer questions.

The Court: I included that. I said all these and all other witnesses.

Mr. McTernan: I was afraid that your Honor's language limited it to the proceedings in which there were contempt adjudications and not to include both the contempt proceedings and the proceedings to compel answers.

The Court: I intended to say that and I thought I did. In other words, that everything offered in opposition to the order of the court directing them to answer questions, as well as everything offered in defense of the presentments for contempt, whether civil or criminal, if it be evidence, that it be deemed to have been offered, if it be offers of proof, it be deemed to be offered, if it be argument and law, that it be deemed to have been said.

Mr. McTernan: Thank you, your Honor. That stipulation is accepted by the witnesses.

I would like to call Mr. Carter. [43]

JAMES M. CARTER

called as a witness by and on behalf of the respondents, having been first duly sworn, was examined and testified as follows:

The Clerk: Will you state your name for the record, please?

The Witness: James M. Carter.

The Clerk: Take the stand.

Direct Examination

By Mr. McTernan:

Q. Mr. Carter, you have been previously identified in these proceedings. A. Yes.

Q. You caused subpoenas to issue for the witnesses Blair, Brodsky and Caress, did you not?

A. I did.

Q. And thereafter you made application to this court for bench warrants for their arrest as witnesses, did you not?

A. The record, I think, speaks for itself. There is a file on each one of those gentlemen.

(Testimony of James M. Carter.)

Q. You did cause that to be done, did you not?

A. I filed the applications, that is right.

Q. Now each of these three witnesses were arrested pursuant to the bench warrant sometime during the month of December, [44] 1948, is that not so?

A. I was not personally present. The court records will state what dates they were arrested on. I have no personal recollection of the exact date.

Q. Will you stipulate that they were arrested during the month of December, 1948?

The Court: We will get the record here. The files will show.

The Witness: I have some notes here that I think I could give you an approximate date.

The Court: The official file will show the date they were presented in court, and I can take judicial notice of it. What three did you refer to?

The Witness: Blair, Brodsky and Caress, the three witnesses who were arrested on bench warrants.

The Court: Mr. Clerk, these are new proceedings and should have new numbers.

The Clerk: Yes, your Honor.

The Court: For Brodsky, Caress and Blair.

The Clerk: Yes, your Honor.

The Court: It appears, in so far as Brodsky is concerned, that he was arrested on November 17, 1948, and bond was fixed in the sum of \$1,000.

Mr. McTernan: On what date?

The Court: Same date; November 17. [45]

Mr. Carter: I think he was actually arrested on the 16th. He was in court I think on the 17th.

(Testimony of James M. Carter.)

Mr. McTernan: My understanding was that he spent one night in jail.

The Court: Yes. The return shows his arrest on the 16th and his presentment to the court the following morning on the 17th.

The matter of Caress shows his arrest on the 3rd day of December and his presentment to the court on December 4th; bond fixed in the sum of \$4,000.

As to Blair, the return shows the arrest of Robert Blair on November 19, 1948, and bond fixed on that same day, November 19th, in the sum of \$2,500.

Mr. McTernan: Your Honor, does the record that you have shown the day on which they were ordered to appear before the grand jury?

The Court: Yes, I think so. (Examining file.) This record does not. One of them does. He was ordered to appear, bond continued that he appear before the grand jury of this court on November 24, 1948, at 2:00 p.m.

Blair's bond was fixed in the amount of \$2,500 and he was ordered to appear before the grand jury next Wednesday—that was on November 19, 1948—and the next Wednesday would have been November 24.

Mr. Caress was ordered to appear before the grand jury [46] on the sixth floor of this building on December 15th. The order was made on December 4th.

Mr. McTernan: Thank you, your Honor.

The Court: Very well.

By Mr. McTernan:

Q. Now, Mr. Carter, do your records which you

(Testimony of James M. Carter.)

have with you show the dates subsequent to the dates just given by the court upon which these three witnesses were recalled from and after the first date on which they were told to appear before the grand jury? A. Not accurately.

Q. Do you have the approximate dates?

A. Well, the grand jury—I have various dates in which the grand jury met. They are only pencil notes and they are not accurate.

Q. Isn't it a fact that according to your recollection Brodsky and Blair, who were originally called before the grand jury on November 24, 1948, were called back before the grand jury on or about December 15, 1948?

Mr. Carter: I am going to object to the question on the ground that it is immaterial, without the issues of the case; that the grand jury is conducting its business has a right to take into account other affairs besides the matter of a few recalcitrant witnesses; that the court will take judicial notice that it has other business to attend to besides the [47] four gentlemen in question.

The Court: What is the purpose of your proof?

Mr. McTernan: I want to show, your Honor, that these facts in connection with our claim that this proceeding and everything that went before it is an abuse of process, to show that these people have been repeatedly summoned back, and back, and back before this grand jury as part of our proof that the sole purpose of this proceeding and everything that went before it is to harass and annoy people by this repetitive calling back and asking them ques-

(Testimony of James M. Carter.)

tions, the legal power as to which, as to the asking of which, is already being determined on appeal, simply as part of the government's plan to harass and annoy people and apply the law discriminatorily against them because the government disagrees with their political beliefs.

The Court: Objection sustained.

Mr. McTernan: I offer to prove that if the witness were permitted to answer, his answer would be yes.

The Court: His answer would be "yes" to what?

Mr. McTernan: That the witness Brodsky and Blair were called back before the grand jury again on December 15, 1948.

I asked him, if your Honor will recall, if it isn't a fact that they were called back on that date.

Q. Isn't it a fact that Brodsky, Blair and Caress were [48] summoned back before the grand jury on another date in the month of December following December 15, 1948?

Mr. Carter: Same objection as made to the previous question.

The Court: Same ruling.

Mr. McTernan: I offer to prove if the witness were allowed to answer the question his answer would be yes.

The Court: Well, Brodsky and Blair are here. You can put them on the stand.

Mr. McTernan: I didn't know your Honor was sustaining the objection on that ground. I thought your Honor was sustaining the objection on the ground that the matter was immaterial.

(Testimony of James M. Carter.)

The Court: In connection with your offer of proof. You say you offer to prove that this witness' answer would be yes.

Mr. McTernan: I am entitled to select my own witnesses, and they are witnesses under charge and are entitled to select their own witnesses. If I have a competent witness to answer the question, that is all I need, as I understand it.

The Court: Objection sustained.

By Mr. Ternan:

Q. Isn't it a fact that the witnesses Brodsky, Blair and Caress were recalled before the grand jury on or about January 3, 1949? [49]

Mr. Carter: Same objection as heretofore made.

The Court: Same ruling.

Mr. McTernan: I offer to prove that if the witness were permitted to answer his answer would be yes.

Q. Isn't it a fact, Mr. Carter, that the three witnesses, Brodsky, Blair and Caress, were ordered back before the grand jury on or about January 12, 1949?

Mr. Carter: Same objection.

The Court: Same ruling.

Mr. McTernan: I offer to prove that if the witness were permitted to answer his answer would be yes.

Q. Isn't it a fact, Mr. Carter——

The Court: Let me ask you: Is it your purpose by this testimony to show that they appeared and testified on these different dates?

(Testimony of James M. Carter.)

Mr. McTernan: I don't know what your Honor means by "testify." On some of these occasions they were called in and simply told to return, and on other occasions they were called in and asked questions, to which they gave responses similar to those which have been read into the record here this morning.

The Court: These are the dates that they were called in with the dates that were read in the record here this morning to answer questions. Is it your position, and you are offering to prove, that these witnesses appeared before [50] the grand jury and gave testimony and aid in this investigation on these dates?

Mr. McTernan: No, indeed, it is not, your Honor.

The Court: I see.

Mr. McTernan: My purpose is to show that this government has caused these people to be called back time and time again without any——

The Court: You said that before.

Mr. McTernan: ——without any object of furthering the inquiry but simply to harass a witness and apply the law discriminatorily against him.

Mr. Carter: May the record show, which the court can take judicial notice of, that the three witnesses which counsel is referring to, that each of them were arrested upon bench warrants that were issued by this court after efforts had been made to serve subpoenas upon them, and then consid-

(Testimony of James M. Carter.)

erable delay occurred from the time of the issuance of the bench warrants to the arrest.

I think also the court should take judicial notice of the fact that there is not only four witnesses before the grand jury, that the grand jury can only question one witness at a time, and that it is therefore obvious that on certain days certain witnesses might have to be excused to other days.

I think the court can take judicial notice of those matters. [51]

The Court: I can take judicial notice of the records and files of the court here, and also the grand jury reports which came down on these different days which involved in some cases as many as 50 and 60 indictments and presentments of other matters.

Mr. McTernan: We are only trying one case here. We are not raising questions on all the other witnesses or cases before the grand jury. Too bad the grand jury didn't confine itself to violations of law instead of trying to use its procedures to discriminatorily annoy people because they disagree with their political beliefs.

The Court: The court will make that determination.

Q. (By Mr. McTernan): It is a fact, Mr. Carter, that one time during the month of January, 1949, these witnesses were called to appear before the grand jury and you didn't even have the grand jury present? Isn't that right? You sent them back and told them to return at another time?

(Testimony of James M. Carter.)

Mr. Carter: Objected to upon the same grounds as heretofore stated.

The Court: It looks to me like it is immaterial. They were ordered to return from time to time, they were all under bond, bench warrants had been issued for them. I do not know how else it could have been handled. It is immaterial anyhow. [52]

Mr. McTernan: Another way it could have been handled was not to even have started a proceeding of this kind.

The Court: Yes, and another way it could have been handled was for them to have answered the questions. They are the ones who chose not to answer the questions and put themselves in the position of seeking to invoke the court's process.

Proceed.

Q. (By Mr. McTernan): Now it is a fact, is it not, that these three witnesses, Blair, Brodsky and Caress, were ordered to appear before the grand jury on or about February 11, 1949?

Mr. Carter: Same objection as heretofore made.

The Court: Same ruling.

Mr. McTernan: I offer to prove if the witness were permitted to answer, his answer would be yes.

The Court: Were not some of the dates read into the record here?

Mr. McTernan: I think so.

The Court: That was Brodsky, Blair and Caress.

Mr. McTernan: I think they were all at the grand jury on February 11th.

(Testimony of James M. Carter.)

The Court: The testimony that was read was the testimony taken this morning.

The Witness: Yes. [53]

The Court: Except as to Doran and Bock. And that was on what date?

The Witness: That was January 12th, Bock and Doran.

The Court: Very well.

Mr. McTernan: I am not sure of the state of the record. Was there an objection to my last question?

The Court: Yes. Mr. Carter objected and I sustained it.

Mr. McTernan: I offer to prove if the witness were permitted to answer, his answer would be yes.

Q. It is a fact, is it not, Mr. Carter, that the same three witnesses were called back before the grand jury on February 18, 1949?

Mr. Carter: Same objection, if the court please.

The Court: Same ruling.

Mr. McTernan: I offer to prove that if permitted to answer the witness' answer would be yes.

Q. That on the same day, February 18th, these three same witnesses were also hailed before the court, were they not, on your motion and order of the court to compel them to answer?

A. I think the record will show they were in this court on February 18th. The minutes will show that.

The Court: Whatever the record shows, it will show. [54]

(Testimony of James M. Carter.)

Q. (By Mr. McTernan): And that proceeding was continued to February 23, 1949, at which time the witnesses were again before the court and the court issued an order compelling them to answer?

A. I don't know whether you asked for a continuance on the 18th or whether the court was busy on the 18th.

Q. In any event, there was a continuance?

A. Yes.

Q. It was continued over to February 23rd?

A. Yes.

The Court: If Mr. McTernan did not ask for a continuance, it is just one time he must have forgotten.

Mr. McTernan: Well, both the witnesses and their counsel have frequently appeared here at times when the court was unable to hear them, and that begins with October 25, 1948, and goes forward. Many times, even while witnesses were in jail, the court was unable to hear counsels' motions and matters had to go over while the witnesses remained in jail.

Mr. Carter: I object to that remark and move it be stricken. I think the court has been very considerate in taking these matters up out of turn.

The Court: Proceed.

Q. (By Mr. McTernan): Mr. Carter, in one of the questions presented in connection with the witness Doran this morning there was a reference to a Ned Sparks. What Ned Sparks was referred to in your question?

(Testimony of James M. Carter.)

Mr. Carter: I object to that upon the ground that the question calls for facts or information that might be within the knowledge of the prosecutor for this district. He is not required to divulge what information he might have in connection with cases that are being investigated. In fact, the questions, some of them, were directed as to who this Ned Sparks was.

Mr. McTernan: May I state my purpose in connection with that?

The Court: There is a motion picture character known as Ned Sparks. I think that your record should probably show whether or not you intended to mean the actor Ned Sparks.

The Witness: I was referring to the actor Ned Sparks.

Mr. McTernan: May I state my purpose, your Honor?

The Court: Yes.

Mr. McTernan: Ned Sparks, your Honor, is a fairly common name. We are seeking to inquire whether the Ned Sparks to which Mr. Carter referred in his answer is the Ned Sparks that was known to be county chairman of the Los Angeles County Communist Party because we wish this information in the record to provide a portion of the setting in which the claim of the privilege against self-incrimination may be evaluated [56] if, in fact, Mr. Carter referred to that Ned Sparks, and

(Testimony of James M. Carter.)

I think he did, answers which would disclose on the part of witnesses that they know him in the sense that they may testify in a court of law of such knowledge, this would serve to tie them in or provide a link in a chain of evidence tying them in with the Communist Party and therefore subject them to the risk of prosecution under the Smith Act, prosecutions similar to which are already in process in New York.

The Court: On all of the grounds you have heretofore stated?

Mr. McTernan: What?

The Court: I am just trying to save you time. You have already stated all of those things.

Mr. McTernan: Perhaps I have. This is something that is before your Honor for adjudication right now and I want my purpose abundantly clear so there will be no misunderstanding.

The Court: The objection is sustained. [57]

* * * *

Direct Examination (Continued)

By Mr. McTernan:

Q. Mr. Carter, who was the Ned Sparks to which you referred in the question that was put to Lillian Doran?

Mr. Carter: I object upon the ground that it is incompetent, irrelevant and immaterial, calls for information in the possession of the prosecutor which he is not required to divulge, privilege information.

The Court: Objection sustained. That is what

(Testimony of James M. Carter.)

he had [61] the witnesses there for, to find out if they knew Ned Sparks.

Mr. McTernan: We are asking what Ned Sparks he referred to.

The Court: I understand. Go ahead.

Q. (By Mr. Ternan): It is a fact, is it not, Mr. Carter, that the Ned Sparks you refer to is the Ned Sparks who is chairman of the Los Angeles County Communist Party?

Mr. Carter: Same objection and upon the same grounds.

The Court: Same ruling.

Mr. McTernan: I offer to prove if the witness were permitted to answer, his answer would be yes.

Mr. Carter: I object upon the further ground to this line of questions that it is already in the record in some of the proceedings which have been incorporated by the stipulation. [62]

* * * *

Q. The information has been presented to the grand jury in the course of this investigation, has it not, Mr. Carter, to the effect that Ned Sparks is the chairman of the Los Angeles County Communist Party?

Mr. Carter: I object to that upon the same grounds heretofore stated, and upon the further ground that the proceedings of the grand jury are secret.

The Court: Objection sustained.

(Testimony of James M. Carter.)

Mr. McTernan: I offer to prove that if the witness were permitted to answer, his answer would be yes.

Q. The Ned Sparks you refer to in your questions to Lillian Doran is also known as Nemmy Sparks, is he not?

Mr. Carter: Same objection.

The Court: Same ruling.

Mr. McTernan: I offer to prove that if the witness were permitted to answer, his answer would be yes.

Q. Now, Mr. Carter, in the course of the criminal proceedings against Messrs. Dobbs, Kasinowitz and Steinberg you gave certain testimony to the effect that the questions put to them were part of an inquiry into alleged false statements by government employees under 18 USC 1001, and that for [63] the purpose of the grand jury's investigation you wished to ascertain from those witnesses the whereabouts of the membership records of the Los Angeles County Communist Party so that you could obtain them and prove whether or not certain government employees were members of the Communist Party.

Now the same testimony that you gave in that proceeding also applies, does it not, to the questions that were put to Lillian Doran and Phil Bock which were presented here to the court this morning in this proceeding?

A. I have already stipulated that that entire

(Testimony of James M. Carter.)

record is part of this record. I take it that was the purpose of the stipulation.

Q. Your answer to my question is generally yes, is that right?

The Court: His answer speaks for itself, and so does the stipulation.

Q. (By Mr. McTernan): You have information to the effect that Ned Sparks and Nemmy Sparks are one and the same person and that that person was the chairman of the Los Angeles County Communist Party, do you not?

Mr. Carter: Same objection as heretofore made.

The Court: Same ruling.

Mr. McTernan: I offer to prove if the witness were permitted to answer that his answer would be yes. [64]

I have no further questions of the witness in view of the court's ruling.

* * * *

Mr. McTernan: Your Honor, certain of the questions presented [65] this morning relate to Elizabeth Glenn and Julia Houdek. We ask that the court take judicial notice of the fact that it has issued bench warrants for the arrest of both of these women and that one of them, the Houdek bench warrant, was the one that was recalled this morning.

May the record at this point show that such warrants had issued, the date of them and the number of the proceeding in which the warrants were issued.

The Court: What has the Houdek matter to do with this matter?

Mr. McTernan: One of the questions I believe, your Honor, was, do you know Julia Houdek.

The Court: Yes, that is right. You want the record in Lillian Doran also?

Mr. Carter: Elizabeth Glenn he suggested as the other one.

Mr. McTernan: The two individuals, it seems to me, your Honor, that there are questions against the witness Blair, do you know Elizabeth Glenn and do you know Mrs. Houdek?

The Court: Elizabeth Glenn is file 8869 Civil. Motion for issuance of a bench warrant filed November 12, 1948, with its supporting affidavits.

There is nothing here indicated in the file as to what happened.

The Clerk: They haven't made a return. [66]

* * * *

The Court: As to Elizabeth Glenn, that was November 12th, and this would indicate its filing November 9. I take it that a bench warrant was issued on the same day.

The bench warrant was ordered issued on November 12 for Elizabeth Glenn. That is all I know about it. It was issued.

Mr. McTernan: Was the bench warrant issued for Julia Houdek on the same date, your Honor?

The Court: That is file No. 8838.

The Clerk: November 9.

The Court: The same day it was filed, November 9. And bench warrant for Mrs. Houdek is recalled this morning, and bench warrant as to Elizabeth Glenn has not yet been recalled.

Mr. McTernan: I think the record should show, your Honor, [67] that the bench warrant for Mrs. Houdek was recalled this morning after the witness had appeared before the grand jury and had returned here for the presentment by Mr. Carter.

The Court: It does not make any difference. I do not see how that can possibly affect it, if it was recalled.

Mr. McTernan: I think that is the fact.

The Court: It was recalled because Mr. Carter advised me yesterday that he intended to move today for its recall. [68]

* * * *

Mr. McTernan: Your Honor, this reminds me that I neglected to offer one item of evidence that I had intended to offer. In the application for bench warrant for both Elizabeth Glenn and Julia Houdek there is a statement by Mr. Carter, which I believe is made under oath——

The Court: Just to make it complete we will by reference incorporate the entire file in No. 8796, Lillian Doran, 8827, Phillip Bock—or is that a bench warrant?

Mr. McTernan: Neither of those is a bench warrant.

The Court: Neither of those?

Mr. McTernan: I don't think so, your Honor.

The Court: That is right.

8874, the entire file for bench warrant for Merle Brodsky will be part of the record in this case.

8842, the entire file for a bench warrant for Robert Blair.

8839, the entire file for a bench warrant for Irving Caress. [73]

8838, the entire file for a bench warrant for Julia Houdek.

Was there not a bench warrant for some others, Elizabeth Glenn, Frank Spector, Mr. Clerk?

The Clerk: There is no number for Frank Spector as yet.

Mr. Carter: There is one other that is involved, and that is the file involving Elizabeth Glenn.

Mr. McTernan: There were a number of other bench warrants issued on virtually the same application.

Mr. Carter: That is right.

The Court: You are only concerned with the bench warrants here now with these people and not with the one for Elizabeth Glenn.

Mr. Carter: That is No. 8869.

The Court: The entire file is Case 8869, proceedings for a bench warrant for Elizabeth Glenn.

Mr. McTernan: May I have one of those?

(The file referred to was passed to counsel.)

Mr. McTernan: Further I believe Mr. Carter will stipulate that in each of those cases which

your Honor has just referred to there was an application for bench warrant signed by himself and Mr. Goldschein which, except for the language designating the witness and the number of the case, were identical in language.

Is that correct, Mr. Carter? [74]

Mr. Carter: That is correct. That particular affidavit is in the record, however.

The Court: Each one had different affidavits attached to it. As I remember, there was a mimeographed affidavit which was the basis, and then it had attached to it in the file different affidavits relating to the effort to serve that particular person.

Mr. McTernan: That is right, your Honor. And the matter about which I asked Mr. Carter to stipulate, which I understand he has stipulated, is that the motion for issuance of bench warrant was in each case the same except for the language giving the name of the witness and the number of the case.

I want to direct your Honor's attention to the paragraph at the top of the second page of that motion reading as follows:

"Said motion is based upon the further ground that said witness is deliberately avoiding service of subpoena and is deliberately impeding the administration of justice and the functioning of the grand jury of this district; on the further ground that various witnesses for whom subpoenas have been issued for appearance before this grand jury

have been following a common course of conduct in avoiding service and impeding the functioning of [75] said grand jury.”

Now this language applies at least, your Honor, to Elizabeth Glenn and Julia Houdek and Dorothy Healy. While this record does not show that a bench warrant was issued for Dorothy Healy, it does show statements by Mr. Carter to the effect that several subpoenas have been issued for Dorothy Healy. And Mr. Carter I believe at one point in the proceedings on February 23rd included Dorothy Healy in this colorful language of his, describing the conduct referred to in the motion for a bench warrant as an “Operation Get Lost.”

Now clearly the purpose and effect of answers to the questions, do you know Dorothy Healy, and all these other questions going into the details of her life and the questions, do you know Elizabeth Glenn, do you know Julia Houdek, must of necessity, if the answers be in the affirmative, tie the witness in with the very conspiracy to impede and obstruct justice, itself a crime, which Mr. Carter has charged against at least the three people I have named, Healy, Glenn and Houdek, as well as many others for whom bench warrants have been issued or subpoenas issued.

So that in addition to the claim of the privilege against self-incrimination under the Smith Act, we submit that the evidence here fully establishes a setting in which it would be extremely dangerous to answer these questions because of the possibil-

ity that they might be tied in with this [76] conspiracy to obstruct justice which has been charged by the United States Attorney.

* * * *

The Court: They need not have been required to have posted anything. I fixed those bonds and I fixed them in [77] that amount because, as I stated at the time, their names were in the papers, it was a notorious fact that the investigating was going on, and made more notorious by many of the people probably who are in the courtroom here today conducting a picket line and picket lines at various times, and their names were in the paper and all they need to have done not to be under \$1000 or \$2500 or \$4000 bond was to have appeared before the grand jury in response to the subpoena, or made themselves available as witnesses.

They could still have insisted upon the preservation of their rights as the other witnesses did in this case who were served and who did appear. [78]

* * * *

Mr. McTernan: The facts presented in this record also, your Honor, in addition to the facts which were available to you on October 25th, clearly point out also the contention which we made at that time that this proceeding denied these witnesses due process of law in that it denied them equal protection of the law. We didn't have available at that time the statement by a high, but unnamed, officer in the Department of Justice that the Administration had found a new way to put the Communists out of business.

Mr. Carter: Just a minute. I thought we had settled all that before. With counsel's own showing we had that settled. [81]

The Court: You do not have that available now. All you have is a newspaper article.

Mr. McTernan: I have available the evidence which this court rejected and I think I have the right to point to it in summing up my case.

The Court: It is not in evidence.

Mr. Carter: You are misstating it, counsel.

Mr. McTernan: I have not said it is in evidence. I know practically everything that has been offered in defense of these people has been rejected, either because it is supposed to be confidential information in the hands of Mr. Carter or because Mr. Carter thinks it is immaterial. But this is all I have to argue to the court, the kind of showing that we would like to make to you.

The Court: You confine your argument to the matters and things which are in evidence, Mr. McTernan.

Mr. Carter: My objection goes further, whether it is in evidence or offered for identification, he is misstating the facts contained in that article. The article states that some person connected with the Un-American Activities Committee made the statement. It doesn't even go so far as to say some official of the Department of Justice said that.

The Court: Let us confine ourselves to the evidence. Proceed. [82]

* * * *

Mr. Carter: May I be heard briefly?

The Court: Yes.

Mr. Carter: First, if the court please, may I observe that many of Mr. McTernan's remarks could have been probably more fitting had he turned his back to the court and talked to the people in the courtroom. Much of this, I think, is far from the mark.

No. 1. What is the effect of this appeal? Let us assume that you filed an indictment against a man for robbing a bank and he was convicted and took an appeal. Does that mean that you suspend all prosecutions of that particular type of case?

The Court: Suppose he went out and robbed another bank while it was on appeal?

Mr. Carter: That is right. There is no particular reason why because an Appellate Court has this question that we should suspend operations. As a matter of fact, we have to extend the term of this grand jury because it was going on and there was yet no decision from the court.

No. 2. I submit he has made no showing tying in these witnesses with the thing that he purports to fear because he argues that association or knowledge of who certain people [91] are about whom these witnesses were interrogated would, in substance, prove that they are members of the Communist Party. I don't think that that conclusion follows at all.

For instance, a person might have information about the Communist Party by having been a member at one time in the past and no longer a member. He might have information because he had been an informer. He might have information because he was an investigator who had made a business of knowing those facts. Or he might have stumbled accidentally on this information. There are many alternatives whereby a person could have the information without necessarily being a member of that party.

Now let me give you an example. Supposing we had a prosecution for the Smith Act on in this court, and I was attempting to prove the elements of the Smith Act, namely, that the defendant had joined an organization which advocated the overthrow of the government by force and violence—we will call it X Organization—and that he was a member thereof, and that at the time he became a member he knew the purposes of that organization. So I called a witness to the stand, and I say to the witness, “Do you know X, the defendant in this case?”

“Yes, I do.”

“Did you ever have a conversation with Mr. X?”

“Yes, I did.” [92]

“Where was it?” Et cetera. All right.

“In that conversation with Mr. X, did he ever tell you that he knew A, B and C, who were members of X Organization?”

I think a court would sustain an objection to that question on the ground that it didn't prove anything. The mere fact that you knew that a certain person belonged to a club or an organization is no evidentiary showing that you yourself are a member of that group.

No. 3. These questions were all preliminary questions. This grand jury was stopped on the threshold of its inquiry. The questions were in most cases, do you know. The answer would have been yes or no. I submit that no proper objection could have been made until the next question followed. If the answer was yes, that you knew, all right, what is it, and then I think the objection, whether good or not, would have been timely. Certainly these objections were not timely.

Finally, let me point out to you that if the court compels witnesses to answer questions in the furtherance of the grand jury investigation the witness is not hurt because if he did have a valid claim to refuse to answer and is compelled by the court, by the processes of the court, to answer the questions he immediately obtains immunity from this fearful thing that he fears, a prosecution under the Smith Act, because by compulsion of the court he is required to testify ipso facto and automatically he obtains an immunity therefrom. [93]

If, on the other hand, his contention was not a valid one then he should be coerced into answering the question.

So either way you look at the matter, the wit-

ness is not hurt. If these witnesses are so fearful of a prosecution under the Smith Act, then by answering these questions under the power of this court they have gained immunity from that prosecution. I think under the McNabb case the Anderson case, where even a lapse of time occurred before arraignment, it invalidates the admissions and certainly anything told the grand jury under the coercive powers of this court could never be used against those people.

These witnesses as a result of a plan, acting together in concert, have determined to impede the process of this grand jury, to prevent this grand jury from finding out anything, and the investigation has been stopped upon the threshold of their inquiry by their activity.

The Court: The situation, while it has proceeded further than it had been on October 2th last year, is essentially and basically no different. I cannot see how any fact or thing before this court which has been adduced here, or any argument or law or case or reason has been advanced, to sustain the objection of these witnesses in their refusal to answer the questions on the ground that it might incriminate them, and for violation of their rights under the [94] First Amendment.

Counsel made five points, the abuse of process was No. 1, and violation of due process No. 2, equal protection—they seem to merge together. It was against the dignity of the court to do this.

I cannot see anything to his point at all. The grand jury is regularly constituted, it is their duty to inquire into possible violations of the law. Likewise it is the duty of the United States Attorney and the Attorney General of the United States to inquire into violations of the law. People owe a duty as citizens to testify and to furnish information. If everybody could refuse to do that it would not be long before you would not have any government, you would not have any Constitution, and you would not have any of these rights with which Mr. McTernan seems to be so endeared.

On the third point, the grand jury, I have already ruled that a witness cannot challenge the grand jury. But in addition to that I want to call counsel's attention to the memorandum which I wrote, and which is reported in 7 F. Supp. 782. Then there was a stipulation that if the witnesses were called here that were called there, their testimony would be the same and that the procedure would be the same. So in the first place I hold that a witness cannot challenge the grand jury and, in the second place, if they could the grand jury is not subject to the challenge indicated by Mr. [95] McTernan.

The last two grounds, it is a little difficult to follow, counsel. I have tried to do so in each of the arguments. It seems one moment that they are afraid they will incriminate themselves because they will disclose a violation of the Smith Act which prohibits the advocacy of the doctrine of overthrow-

ing the government by force and violence, and it seems as though the next moment they are insisting upon their rights because it is a political party. It is inconceivable to me that any political party was contemplated to be allowed to exist by the Constitution that had for its purpose the destruction of that Constitution and the government by force and violence.

On the matter of the incrimination, the position of the defendants seems to be that they say they are not admitting that if they answered the question that they might show guilt under the Smith Act, but they are afraid that they might be accused under the Smith Act. I think the matter of incrimination does not go to a disclosure of anything which might lead to a possible wrongful prosecution, but the matter of whether or not a person can refuse to answer a question on the ground he might incriminate himself is that it discloses some thing which shows that he has committed a crime or discloses something which would tend to indicate that he did actually commit a crime. Now applying that here, their refusal [96] would indicate that they are afraid that it would disclose that they do actually advocate the overthrow of the government by force and violence. But Mr. McTernan disclaims that.

Now on the matter of obstruction of justice, a rather novel way to frustrate completely the processes of government in the investigation of a prosecution of crime results in starting an investigation

and then everybody connected with it and all possible witnesses joining together to obstruct it, and then they are called to refuse to answer on the ground that they are therefore committing a crime. It just is not logical and is almost verging on the point of being ridiculous, as do a great many of the statements which Mr. McTernan has urged in this court.

Now on the First Amendment, they say they have the right of free speech. I think that I have heretofore indicated in opinions which I have written and decisions which I have made that I regard the First Amendment as a very precious one. But I do not think that the founders of the Constitution ever intended that the First Amendment should be a scabbard to hold a sword and conceal it with which the entire structure of the government could be stabbed and thus killed violently. The First Amendment was intended to give free expression of ideas and not intended to hide conduct which would endanger or destroy the government violently.

I cannot help but have recurrence to John Marshall's [97] statement in *Gibbons v. Ogden* and apply it to some of the argument which Mr. McTernan has made here about the Constitution:

“Powerful and ingenious minds * * * may, by a course of well-digested, but refined and metaphysical reasoning, founded on these premises, explain away the Constitution of our country, and leave it, a magnificent structure, indeed, to look

at, but totally unfit for use. They may so entangle and perplex the understanding, as to obscure principles, which were before thought quite plain, and induce doubts where, if the mind were to pursue its own course, none would be perceived.

The whole situation here in my mind, if counsel for the defendants is correct, would result in the total destruction of government.

I think the case of *In Re Willie* is still the law. All of these questions here are questions, do you know, and I cannot see any exception to any of them. I thought for a while that perhaps the questions, do you know Elizabeth Glenn, or do you know Julia Houdek, in connection with the obstruction of justice might be justified, but on further consideration I cannot see it.

The order of the court will be—if each of the defendants will arise, please—that Mr. Irving Carress is [98] found guilty of civil contempt, that Mr. Robert Blair is found guilty of civil contempt, that Mr. Merle Brodsky is found guilty of civil contempt, that Mr. Frank Spector is found guilty of civil contempt, that Mr. Phillip Bock is found guilty of civil contempt, and that Mrs. Lillian Doran is found guilty of civil contempt.

The sentence and the imposition of sentence will be deferred until—the other matters were continued to March 21st?

Mr. Carter: Could we have some date other than March 21st and dispose of this matter before or

after that date? I let that date be set last time we were in court, but it is a very inconvenient date to my calendar. I would like to either advance the date of sentence of the three other persons to some time this following week or put it past the 25th of March, one or the other.

The Court: The matter of the sentence of these persons then is set for the 28th of March. Is it agreeable that I vacate the order setting it for March 21st and likewise set those for the 28th?

Mr. McTernan: That will be agreeable.

The Court: In the absence of the defendants?

Mr. McTernan: So stipulated.

The Court: And you will produce them, that is to say, Steinberg, Kasinowitz and Dobbs? [99]

Mr. McTernan: Yes, your Honor.

The Court: That will be the order of the court.

The defendants are ordered and directed to return at that time, March 28th, at the hour of 2:00 o'clock p.m., on that day. And that will be the time that the matter of Steinberg, Kasinowitz and Dobbs is set for now. March 28th at 2:00 o'clock p.m.

[Endorsed]: Filed April 6, 1949. [100]

In the District Court of the United States in and for
the Southern District of California,
Central Division

Honorable Peirson M. Hall, Judge Presiding.

Nos. 8796-PH, 8827-PH, 8839-PH, 8842-PH,
8874-PH, 9321-PH

In Re: LILLIAN ADELE DORAN, PHILLIP
BOCK, IRVING CARESS, ROBERT BLAIR,
MERLE BRODSKY and FRANK SPECTOR.

Nos. 20403, 20404, 20405—Criminal

UNITED STATES OF AMERICA,
Plaintiff,

vs.

SAMUEL HARRY KASINOWITZ, HENRY
STEINBERG and BEN DOBBS,
Defendants.

REPORTER'S TRANSCRIPT OF
PROCEEDINGS

Los Angeles, California
March 28, 1949

Appearances: For the Government: James M. Carter, United States Attorney, Los Angeles 12, California; and [2*] Ernest A. Tolin, Assistant United States Attorney.

For the Respondents and Defendants: Margolis & McTernan, 112 West Ninth Street, Los Angeles 15, California; by Ben Margolis, Esq.; and Esther Shandler. Amicus Curiae: A. L. Wrin, Esq.,

* Page numbering appearing at foot of page of original certified Reporter's Transcript.

416 Douglas Building, Los Angeles 12, California.

* * * *

The Court: Samuel Harry Kasinowitz, come forward.

This is the time set for sentence on the matter of criminal contempt of which you have heretofore been found guilty. The matter was referred to the Probation Office. I have received a report—I received it some time ago—it was originally set for sentence I believe on January 17th and has been continued from time to time, and the defendant—excuse me. Have you had no opportunity to consult with your counsel before this?

Mr. Margolis: He has been working, your Honor.

The Court: Have you had no opportunity to consult your [6] counsel since you were convicted?

Mr. Margolis: He has had opportunity.

Mr. Kasinowitz: Yes, I have.

The Court: Very well. I think you might take your hands out of your pockets, sir.

Do you have anything to say in connection with the matter other than what has already been said? Do you have anything to say, Mr. Kasinowitz?

Mr. Kasinowitz: Yes, sir. I would like to make a statement.

The Court: Very well. [7]

* * * *

Mr. Margolis: Your Honor was here, that is correct.

But nevertheless with that record before them three judges, two of them not writing an opinion and one writing an opinion, three out of the six

hearing it, have voted to reverse the judgment, and, in effect, have sustained the position of these defendants.

I want to advise the court that with respect to the matters now pending in the Court of Appeals we intend to petition for a rehearing, and if that is denied we intend to petition to the Supreme Court of the United States for certiorari. Under these circumstances, and if this language that I have read to your Honor from the case of *United States v. Johnson* is meaningful—and I think that it is—the only alternative that these people have, if they want to defend their rights under the Constitution, what they believe to be their rights under the Constitution, is to persist in their position until there is a decision by the highest court having authority to pass upon this question. [11]

* * * *

Mr. Steinberg, this is the time set for sentence on the [12] criminal contempt proceeding on which there was a verdict of guilty previously I think on January 17th. I put the matter over from time to time because the grand jury has been meeting and you have been advised upon those occasions when you were in court by myself at the time they were meeting, and I have informed the United States Attorney and he so stated in court that he would advise you at other times. The record does not appear to show that you have appeared before the grand jury and answered any of the questions which were theretofore asked of you.

Do you have anything to say now before sentence is imposed?

Mr. Steinberg: Yes, your Honor.

The Court: Very well. [13]

* * * *

Mr. Dobbs.

Mr. Dobbs, this matter is continued until today for the matter of sentence on the judgment heretofore finding you guilty of criminal contempt for your refusal to answer the questions propounded to you before the grand jury. The matter was continued from time to time and over periods when the grand jury was meeting, and I did so in order that you might have an opportunity, if you desired to take it, to appear before the grand jury and answer the questions.

It does not appear that you have done so. Do you have anything to say before the court pronounces judgment?

Mr. Dobbs: I would like, your Honor, to make a short statement.

The Court: Very well. [15]

* * * *

Mr. Bock.

Mr. Bock, this matter was continued until today from March 3rd in order that judgment thereupon entered finding you guilty of civil contempt for refusal to answer questions to the grand jury might be postured today for sentence. Do you have anything to say?

Mr. Bock: Yes, your Honor. [17]

* * * *

The Court: Very well.

Mr. Bock, you have been found guilty of civil contempt and, as I read the decisions of the Supreme Court, having [20] reached that conclusion heretofore there is nothing that has been presented here today which goes to the merits of the subject which I have passed upon and need not reiterate. I am impelled by virtue of the decision in the Penfield case to conclude that I have, in so far as the power of punishment is concerned, only the power to commit you to the custody of the Attorney General until you answer the questions.

It is therefore the judgment and sentence of the court that you be committed to the custody of the Attorney General until you answer the following questions:

Do you know Dorothy Healy?

Do you know the business and home address or home address of Dorothy Healy?

Do you know the occupation of Dorothy Healy?

Do you know whether or not Dorothy Healy is married?

Do you know her husband's name?

Do you know his occupation?

What is his occupation?

You will stand committed. [21]

* * * *

Mr. Caress.

Mr. Caress, the situation with you is similar to that of Mr. Bock. You were previously found guilty of civil contempt for your refusal to answer certain

questions propounded by the grand jury, and the matter was continued until today for sentence.

Do you have anything to say?

Mr. Caress: Yes, your Honor.

The Court: Before sentence is pronounced?

Mr. Caress: Yes, sir. [22]

* * * *

The Court: Very well.

Mr. Caress, as I have heretofore indicated, the court has no discretion in the matter of punishment on civil contempt. You have heretofore been found guilty of it, and it is therefore the judgment and sentence of the court that you be committed to the custody of the Attorney General until you answer [30] before the grand jury the following questions:

Can you tell us the table of organization of the Communist Party of Los Angeles County?

Do you know who in the Los Angeles County Communist Party setup has knowledge of or is in charge of membership?

Do you know Dorothy Healy?

Do you know where she lives?

Do you know where she can be found or located?

Do you know her husband's name?

Do you know his occupation?

Do you know any person in this county who advocates the overthrow of the government of the United States by force and violence?

Do you know any organization in this county which has as its purpose the overthrow of the government by force and violence?

Mr. Caress, you will stand committed to the custody of the marshal.

At the conclusion of the civil contempt matters I will ascertain from the United States Attorney the next meeting date of the grand jury and it is my intention to also make an order that in the event any of the witnesses found guilty of civil contempt desire to testify they will notify the United States Attorney who, within 24 hours from that receipt of that notification, excluding Saturdays and Sundays, will [31] convene the grand jury for the purpose of permitting the defendants to purge themselves of contempt. So if I forget that, will somebody remind me of it?

Mr. Blair.

Mr. Blair, you, like Mr. Bock and Mr. Caress, have heretofore been found guilty of civil contempt for your refusal to answer certain questions before the grand jury after being instructed by the court to do so. The matter was continued until today for sentence.

Do you have anything further to say? [32]

* * * *

The Court: I beg your pardon. I did not hear you.

Mr. Blair, like the ones who have preceded you, I have no alternative except to commit you to the custody of the Attorney General on this matter of civil contempt, and that is now the judgment and sentence of the court, that you be so committed until you answer the following questions before the grand jury:

Do you know the table of organization or who the officials of the Communist Party are?

Do you know who or what officer of the Communist

Party of Los Angeles County is in charge of membership or has knowledge of the membership rolls in this county? [34]

Do you know Dorothy Healy?

Do you know where she can be located or can be found?

Do you know her business or home address?

Do you know her business or occupation?

Do you know what her husband's name is?

Do you know his occupation, her husband's occupation?

Have you seen Dorothy Healy recently?

Do you know any person in the County of Los Angeles who advocates the overthrow of the government of the United States by force and violence?

Do you know any organization in the County of Los Angeles which has the announced purpose of the overthrow of the government of the United States by force and violence?

Do you know Elizabeth Glenn?

Do you know Mrs. Houdek?

You will stand committed.

Mr. Brodsky.

Mr. Brodsky, like Mr. Bock, Mr. Caress and Mr. Blair, you are here convicted of civil contempt for your refusal to answer questions to the grand jury after being instructed to do so by the court. The matter was continued until today for judgment and sentence. That time has now arrived.

Do you have anything to say before the court pronounces judgment?

Mr. Brodsky: Yes, your Honor, I do. [35]

The Court: Mr. Brodsky, as I have indicated to the others, I have no alternative, having found you guilty of civil contempt and having passed on the merits, than to commit you as I did the others.

It is therefore the judgment and sentence of the court that you be committed to the custody of the Attorney General [37] until you answer the following questions:

Do you know and can you tell us the table of organization of the Communist Party of Los Angeles County?

Do you know who in the Communist Party in Los Angeles County is in charge of membership or membership rolls?

Do you know Dorothy Healy?

Do you know what her business or residence address is, or where she can be located?

Do you know her husband's name?

Do you know his—that is, her husband's—business or occupation?

Do you know what her business or occupation is?

Do you know any person in the County of Los Angeles who advocates the overthrow of the government of the United States by force and violence?

Do you know any organization in the County of Los Angeles that has for its purpose the overthrow of the United States government by force and violence?

Who are you an organizer for?

You will stand committed.

Mr. Spector.

Mr. Spector, you are here today for the sentence

on the judgment of civil contempt heretofore found against you by this court. Do you have anything to say?

Mr. Margolis: I wonder if Mr. Carter would like to read [38] the statement before it is read by the witness to see if it has his approval.

Mr. Carter: The witness read very well.

Mr. Spector: I have a copy for Mr. Carter, too.

The Court: You will refrain from your horse-play.

Mr. Spector: I would like to depart from the script for a minute, your Honor, and relate the following: In 1930 myself and seven more people, men, were tried under the criminal syndicalism law in Imperial Valley, in Imperial County, and after a long grueling trial, after four weeks, we were sent to San Quentin and Folsom for the total period each of 42 years. I haven't served that time, as you can see. I spent over a year and a half in San Quentin, and then the appeals court set aside my conviction and, in essence, found that I was not guilty of the charge made against me. But in the meantime I served one and a half years and so did my compatriots, my fellow workers.

What is going to be the case today is that myself and the other defendants in this case are going to stay in jail until the highest court—I have no doubt—will find us not guilty.

Now just two more points, your Honor. I hold that I am not a criminal. This may not be the proper legal term. But to send a guy to jail you send him because

he is supposed to be a criminal. I am not a criminal. [39]

Firstly, throughout this entire case the United States Department of Justice, through Mr. Carter, its local representative, has gone to great pains to give this case the appearance of a routine Federal grand jury investigation, so-called, in ascertaining whether certain Federal employees perjured themselves in the notorious and oppressive loyalty checks. These efforts at creating such a false impression have now fallen flat.

In its place stands out in bold relief the fact that the Department of Justice is using the institutions of the Federal grand jury and the Federal Courts and this court as weapons for the intended destruction of the working class political party—the Communist Party of the U. S. A. These intentions are embodied in this case, as well as in those cases now occurring in New York and Denver, Colorado.

To suit its intended purpose, the Department of Justice has gone down the depths of hypocrisy. In the one in New York it is now trying desperately to throw into jail for long terms eleven Communist leaders for reconstituting the Communist Party in 1945.

On the other hand, the very same Department of Justice attacks my right to refuse to answer questions which, in the light of the New York case, will clearly tend to make a criminal out of me and subject me to the prosecution by the very same Department of Justice and the very same Mr. Carter. In [40] other words, you are damned if you do and damned if you don't.

Secondly, why these efforts to destroy the Communist Party? The reasons, as I see them, are that this party and similar parties in other lands are, in my judgment, and in the judgment of millions of other people, the poor people especially, today the biggest obstacle in the path of American rich and powerful to dominate the entire world as Adolf Hitler tried. And to achieve this domination, these rich and powerful people of our country are willing to plunge the whole world into a third world war, into a third blood bath which, in scope, will ruin our country and many other lands well nigh beyond recovery.

The Communist Party of the U. S. A. today in my opinion is the clearest voice that bespeaks the longings of the war-weary American people, especially the workers who yearn for a peaceful world, for secure jobs that will provide for their loved ones and for genuine traditional American democracy.

That is anathema to big business. Hence the Communist Party must be destroyed. Hence the New York case. Hence the Denver case. Hence our case here today.

Third and last, your Honor, this court has probably read the despicable Jack Tenney dossier on myself. Allow me in a few words to describe myself.

The Court: No, I have not.

Mr. Spector: You haven't? Well, you will. [41]

The Court: Well, I do not know. If it is interesting enough I probably will read it.

Mr. Spector: You can do so if you desire.

Like millions of others who came from foreign lands

to help build this beautiful land, America, I landed here 32 years ago. I made my home in Los Angeles in 1920. My daughter was born here, and so was my grandson. Nearly all these years I have worked at my trade, the building trade, as a union man, a member of the AFL. Time after time I was denied my final citizenship papers, never because of moral turpitude but always because of my activities in labor's behalf.

No matter. I have lived here long enough, worked here hard enough, and sank my roots deep enough to earn my thoughts of America as my adopted land, whose true national interests I defend in this case today.

Like any other normal human being, your Honor, I don't care to go to jail. I would rather go about my own work and be with my family and friends. But, your Honor, first of all and foremost I am an honest man, an honest member of my class, the working class.

I have made my choice today. I will sleep with a clear conscience—in jail—if that is the court's decision. [42]

* * * *

The Court: Mr. Spector, it is the judgment and sentence of the court that you be committed to the custody of the Attorney General until you make answer to the grand jury to the following questions:

Do you know the official organization of the Communist Party of Los Angeles County?

Do you know Dorothy Healy?

Do you know where she can be found or located?

Do you know her husband's name?

Do you know her husband's occupation?

Do you know Dorothy Healy's occupation?

Do you know whether or not Dorothy Healy is married?

You will stand committed to the custody of the marshal.

Lillian Adele Doran.

Mrs. Doran—do you desire time to consult your counsel?

Mr. Margolis: I wonder, could we have a short recess? I haven't had a chance to talk to Mrs. Doran.

The Court: You have had no opportunity to talk with her?

Mr. Margolis: It is 10 minutes after 3:00.

The Court: She has been found guilty since March 3rd.

Mr. Margolis: That is correct, your Honor.

The Court: And her appearance before the grand jury was [43] last November 4th, I believe.

Mr. Margolis: My associate, Mr. McTernan, has been handling this matter, as your Honor knows. He has been called out of town and I took over this matter at pretty much the last moment. He has talked to her. I have not.

The Court: Do you wish time to consult your counsel?

Mrs. Doran: Yes, I do.

Mr. Margolis: I was going to point out that this is almost the time for the afternoon recess. If we could have five minutes, that is all I want.

The Court: Very well. We will have a short recess.

(Short recess.)

The Court: Mrs. Doran, you are here under conviction of civil contempt for refusal to answer questions to the grand jury after being instructed to do so by the court. This is the time set for sentence. Do you have anything to say?

Mrs. Doran: Yes, your Honor.

The Court: Very well. [44]

* * * *

The Court: It is the judgment and sentence of the court, Mrs. Doran, that you be committed to the custody of the Attorney General until you answer the following questions to the grand jury:

Do you know Ned Sparks?

Do you know Dorothy Healy?

Do you know her business or home address?

Do you know her occupation? [45]

Do you know where she can be located?

Do you know whether Dorothy Healy is married?

Do you know her husband's name?

Do you know his occupation?

If you do know his occupation, will you tell us what his occupation is?

You will stand committed.

Now as to Bock, Caress, Blair, Brodsky, Spector and Doran, Mr. Carter, when does the grand jury meet again? On April 21st?

Mr. Carter: April 21st, your Honor.

The Court: The defendants are advised that the grand jury will meet in this building at the regular meeting place on April 21st. If at that time they desire to appear and testify and answer the questions,

for your refusal to answer which you are now committed, you may do so.

If at any time during the period of your commitment you desire to make answers to these questions which you have been ordered to answer to this grand jury, you may advise the United States Attorney in writing, either by yourself or through your counsel, and the United States Attorney will, within 24 hours from the date of receiving that (unless it is received so as to require the grand jury to be here on a Saturday and Sunday) convene the grand jury for the purpose of hearing the answers to the questions by these defendants. [46]

* * * *

The Court: Very well.

On the matter of Kasinowitz, Steinberg and Dobbs, each of you have heretofore been given an opportunity to make a statement and have made your statements.

Is there any legal reason why sentence should not be pronounced other than that already heretofore advanced?

Mr. Margolis: None other than that already advanced.

The Court: Very well. It is the judgment and sentence of the court that you, Samuel Harry Kasinowitz, be committed to the custody of the Attorney General for a period of one year.

It is the judgment and sentence of the court that you, Mr. Henry Steinberg, be committed to the custody of the Attorney General for a period of one year.

It is the judgment and sentence of the court that

you, Mr. Ben Dobbs, be committed to the custody of the Attorney General for a period of one year.

You will stand committed.

That concludes the matter? [47]

Mr. Margolis: I have a number of matters, your Honor, that I would like to take up at this time. First of all, with respect to the criminal cases, I hereby move to vacate and set aside the judgment just announced by the court upon all of the grounds previously urged against said judgments, and in addition upon the ground that the sentence is unreasonable, excessive and constitutes, under all of the circumstances of this case, cruel and unusual punishment in violation of the Constitution.

The Court: Do you wish to be heard, Mr. Carter?

Mr. Carter: I think the discussion and argument in the record which counsel has referred to is sufficient.

The Court: Very well. The motion is denied.

Mr. Margolis: Now, if your Honor please, I wish to first of all make a motion for bail in the criminal cases, that is, in the cases in which your Honor has just imposed the sentence of one year upon each of the three defendants. [48]

* * * *

Mr. Margolis: Your Honor please, Rule 46(a) of the [49] criminal rules for district courts promulgated by this Supreme Court and applicable to this and other district courts, lays down the test—it is Rule 46(a) Subdivision (2)—lays down the test for granting of bail in criminal cases. That test is whether or not a substantial question exists.

Before turning to the question of whether or not a substantial question exists in this particular case, I want to cite to your Honor some of the cases on this point interpreting this rule and the rule which preceded it which had been in effect for many years and which contained the identical or substantially identical language presently embodied in Rule 46(a) (2). [50]

* * * *

If—if—the appeal is sustained there will be ample time to carry into effect the punishment. We firmly believe that the appeal will be sustained and we ask your Honor to admit these three defendants convicted of criminal contempt to bail pending the appeal, and we say to your Honor that we intend to press the appeal with the utmost possible speed.

I also have a motion on the civil matter but I will let that wait.

The Court: Let us get all your motions in at one time.

Mr. Margolis: I will turn now to the civil cases. [68]

* * * *

March 29, 1949

The Court: I have listened with a great deal of interest to the arguments advanced and in the decision of the matter I have taken into consideration particularly the things that Mr. Wirin has urged, but I cannot see, as I indicated to him, how I can escape my responsibility here of making a decision.

The purpose of having judges is to make judgments, to reach conclusions. I do not suppose that

there is any case [135] ever tried but that there might not be a difference of opinion found among lawyers; as a matter of fact, every lawsuit has one lawyer advocating one side and another lawyer advocating the other. They are both sincere, but they both cannot be right. And the function of a judge is to decide between them.

So in this matter here, as I indicated, we have to go back to what the investigation was about. It is entitled: "In the Matter of the Investigation by the Grand Jury Concerning Loyalty of Government Employees, Entitled Miscellaneous Investigation No. 279." It is not concerned with an investigation generally of the Community Party of Los Angeles County or anyplace else.

What occurs in that connection? These witnesses have appeared and have been asked these questions which have been repeated so many times that it would be useless and futile and mere repetition to repeat them here.

Now I have found them guilty and I have sentenced them, three of them on criminal contempt and the remainder of them on civil contempt. The question before me is whether or not, as to the criminal contempt, there is a substantial question.

I am not sure what the measure of a determination of bail in such case as this would be under the civil rules. They make no provisions specifically for bail in civil contempt. The general idea of bail or supersedeas bond, which [136] is the same thing in civil

contempt, is that the one who has had a judgment against him in a lower court shall deposit a sufficient sum of money or otherwise give such security as will make the plaintiff whole, or the other side whole, in the event that he loses on appeal.

Here there is the public interest involved. The grand jury is here. The United States Government is involved, of course, and the grand jury and the courts are a part of the instrumentalities of the government. What measure you would get to find to make the government of the United States or the public interest whole, I do not know.

In any event, it does not seem to me that there is a substantial question concerning a single one of these questions. I have read them over and over and over again, and while I have due regard for the opinion of the divided court on the Court of Appeals, I do not have the benefit of any opinion. I do not know what they divided on, or why. Judge Denman's opinion is not illuminating in any respect whatsoever, and it seemed to me that he proceeded on a false premise in the beginning, not knowingly taken but nevertheless not postured upon the situation as it actually was. So I cannot reach any other conclusion, in view of my convictions and in view of my duty as a judge, than to announce them and that is that the bail is denied. [137]

* * * *

Mr. Margolis: I make a motion, first of all, for a stay and for bail merely pending the time that it will take me to make an application to the Appellate

Court. Nobody can be hurt a great deal by that. If the Appellate Court agrees with your Honor they will be back in jail so soon that nobody can be hurt. On the other hand, if the Appellate Court disagrees then they will not have been in jail needlessly this time.

That is point No. 1. [139]

* * * *

The Court: As to your first motion, it is denied.

* * * *

[Endorsed]: Filed April 6, 1949. [140]

In the United States District Court,
Southern District of California,
Central Division

Honorable Peirson M. Hall, Judge Presiding:

In Re:

No. 8839-PH—IRVING CARESS

No. 8842-PH—ROBERT BLAIR

No. 8874-PH—MERLE BRODSKY

No. Misc.—FRANK SPECTOR

REPORTER'S TRANSCRIPT OF
PROCEEDINGS

Los Angeles, California

February 11, 1949

Appearances: For the Government: James M. Carter, United States Attorney, Los Angeles 12, California; and Ray H. Kinnison, Assistant United States Attorney.

For the Respondents: Gallagher, Margolis, McTernan & Tyre, 112 West Ninth Street, Los Angeles 15, California; by John T. McTernan, Esq.; and Esther Shandler [2*]

Mr. Carter: May it please the court, the grand jury has come into the courtroom and we have a matter to present concerning four witnesses who were interrogated before the grand jury and who refused to answer certain questions, basing their

* Page numbering appearing at foot of page of original certified Reporter's Transcript.

refusal upon the ground that they might incriminate themselves. Your Honor will recall that after this proceeding started apparently some group of people or organization put into effect an "Operation Get Lost," as a result of which some bench warrants were issued. Three of these people are Robert Blair, Irving Caress and Merle Brodsky, who were arrested on bench warrants, and the fourth one is Mr. Frank Spector, upon whom a subpoena was served.

I will call Miss Duffy as a witness.

FRANCES L. DUFFY,

called as a witness by and in behalf of the government, having been first duly sworn, was examined and testified as follows: [4]

Direct Examination

By Mr. Carter:

Q. Miss Duff, you are the official court reporter who took some proceedings before the grand jury?

A. I am.

Q. Did you take some proceedings on January 12, 1949? A. I did. [5]

Q. In which these four witnesses whose names have been called were called as witnesses?

A. Yes, sir.

The Court: You were sworn prior to the commencement of the testimony, were you?

The Witness: I was, your Honor.

Q. (By Mr. Carter): And have you prepared a transcript of that proceeding? A. I have.

Q. I show you a transcript purporting to be the

(Testimony of Frances L. Duffy.)

questioning of Merle Brodsky on January 12, 1949, and ask you if that is the transcript that you prepared at that time for the grand jury.

A. (Examining transcript): Yes, it is.

The Court: January 12th?

The Witness: January 12th.

Q. (By Mr. Carter): And is this a copy of the same transcript?

A. (Examining document): Yes, sir.

Mr. Carter: I have certain notes here in the original. Is it satisfactory, Mr. McTernan, that the reporter read from her typed transcript rather than from her original notes?

Mr. McTernan: I have no objection. [6]

Q. (By Mr. Carter): Miss Duffy, will you read us the proceedings before the grand jury on January 12, 1949, concerning Merle Brodsky, the questions asked and the answers given?

A. Mr. Carter said, "Mr. Brodsky," and then the questions.

The Court: Was Mr. Brodsky sworn?

The Witness: Yes, your Honor; he was sworn.

"Q. (By Mr. Carter): Mr. Brodsky, what is your first name, Merle?

"A. That is right.

"Q. Do you go by any other name, other than Merle Brodsky? A. No.

"Q. Is that the name you were born under?

"A. Yes.

"Q. Where do you live?

"A. 4200 Beethoven, Venice, California.

(Testimony of Frances L. Duffy.)

“Q. What is your business or occupation?

“A. I refuse to answer that question on the ground that it might incriminate me.

“Q. By that you mean you are in some illegal business?

“A. I would like to consult my attorney on [7] that question.

“Mr. Carter: Well, we will pass that question for the moment, then.

“Q. (By Mr. Carter): Mr. Brodsky, you are not under investigation by this grand jury.

“This grand jury investigation concerns people who are presently employees of the Federal government.

“Are you presently an employee of the Federal government? A. No.

“Q. And have you been a civilian employee of the Federal government in the last year?

“A. No.

“Mr. Carter: Now, this investigation concerns people who are presently employees of the Federal government. We call them ‘subjects.’ You are not a subject of this investigation; you are called in here as a witness, to give certain testimony.

“Q. (By Mr. Carter): Are you a citizen of this country? A. Yes.

“Q. You know, do you not, as a citizen you owe [8] certain obligations to your government, such as supplying information and giving information within your knowledge to a grand jury, if called as a witness?

(Testimony of Frances L. Duffy.)

“A. May I get a clarification, because you seem to have asked me a question and then defined what a citizen is.

“My clarification is, if I know what it is to be a good citizen, I say ‘Yes.’ I think the Constitution and the Bill of Rights pretty well determines the privileges and outlook of what it means to be a good citizen.

“Q. I didn’t ask you what it meant to be a good citizen. I asked you if you knew that a citizen had certain duties, one of which is to give testimony before a grand jury if called as a witness.

“A. Any question this grand jury asks of me which does not infringe on my constitutional rights I will be glad to answer.

“Q. You understand also you may raise the question of your privilege, but you are not the final judge of that. You understand that, do you?

“A. I am not an attorney. I can’t give——

“Mr. Carter: Let me state what the law is [9] on that, so you won’t be under any misapprehension.

“If a person is asked a question which he thinks might subject him to prosecution by the agency involved, in this case the Federal government, he can refuse to answer.

“If you are asked a question which you think might subject you to prosecution under the laws of the United States, then you can raise the question of privilege, by declining or refusing to answer that question. However, a judge of the Federal

(Testimony of Frances L. Duffy.)

Court then decides whether your claim of privilege which you have made is a good claim; and if he decides that you have not made a good claim, then his decision, if and when it becomes a final decision, is the one that controls. In other words, it is not your decision; it is for the judge to finally determine whether it is a good claim.

“Q. (By Mr. Carter): Do you understand what I have told you?

“A. I understand what you have said.

“Q. All right, going back to this inquiry, we are attempting to develop facts showing evidentiary matter as to whether or not these subjects, [10] these employees of the Federal government, did or did not belong to certain organizations about which they made statements. If they made a false statement, then it would appear that a crime had been committed against the Federal government.

“Do you know and can you tell us the table of organization of the Communist Party of Los Angeles County?

“A. I will have to refuse to answer that on the grounds that it would incriminate me, and, secondly, I think it is an obvious inquiry into my political beliefs and affiliations, which I fear you have no right to do.

“Mr. Carter: Of course that last statement is rather absurd, when I haven't asked you your beliefs, and the question is no different than if I asked you if you knew who the chairman of the Republican Party in this county was. That

(Testimony of Frances L. Duffy.)

wouldn't be any proof at all that you were a Republican.

"The Witness: Well, I think you are in a position, in asserting many of these things—even though you make the assertions, I think that this is an inquiry into my political beliefs and political affiliations.

"The Constitution is very specific on this [11] question. Furthermore, as I say, I feel that—I refuse to answer this on the ground it might incriminate me; that these are rights that are granted and should be adhered to as——

"Q. (By Mr. Carter): What does the Constitution say about that subject? You are referring to something I never heard about.

"A. I would suggest that perhaps the Constitution should be read before the grand jury.

"Q. That might be a good suggestion; but I am asking you what particular provision you are referring to when you talk about your right to political views?

"A. I don't think it is my obligation to refer to that. I think we could have the Bill of Rights, and it would be in there.

"Q. I would be glad to get one, and have you point out the provision you refer to.

"A. I think it is obvious it is not incumbent upon me to point that out.

"Q. Do you know who, in the Communist Party in Los Angeles County, is in charge of membership or membership rolls?

(Testimony of Frances L. Duffy.)

“A. I refuse to answer that question on the [12] ground that it might incriminate me; that it is further again an inquiry into my political beliefs. I feel that you do not have the right to inquire into these. I feel the right of political beliefs of people are their own.

“Q. Do you know Joe E. Brown?

“A. Joe E. Brown, the movie actor?

“Q. Let's say Joe E. Brown, the movie actor. Do you know him?

“A. If you say Joe E. Brown, the movie actor, I don't know him personally. I know of Joe E. Brown, the movie actor.

“Q. You don't think answering that question will incriminate you in any way?

“A. I have answered the question, haven't I? I said I would answer any question this grand jury wanted to ask of me that would not infringe on my political beliefs or not tend to incriminate me.

“Q. Do you know Dorothy Healey?

“A. I refuse to answer that question on the ground it may tend to incriminate me, and further that it is an inquiry into my political beliefs and associations.

“Q. Do you know what her business or residence address is, or where she can be located? [13] Will that incriminate you, also, to answer that?

“A. I am afraid I must answer that question again—so far these questions all seem to cover the same person—that this question would incriminate

(Testimony of Frances L. Duffy.)

me, and again it is an inquiry into political beliefs and affiliations.

“Q. Do you know what her business or occupation is?

“A. If I must repeat, I refuse to answer the question on the ground I believe it would incriminate me; furthermore it is an inquiry into my political beliefs and affiliations.

“Q. Do you know her husband’s name? Is that going to incriminate you also?

“A. I refuse to answer. I hate to be repetitious; I think it is obvious to everyone concerned that these are the same questions.

“I refuse to answer on the ground it may tend to incriminate me; furthermore, an inquiry into political beliefs.

“Q. Do you know his business or occupation?

“A. I refuse to answer on the ground it may tend to incriminate me and inquires into my political beliefs. I will make it shorter.

“Q. Do you know any person in the County of Los Angeles who advocates the overthrow of the Government of the United States by force and violence?

“A. I refuse to answer on the ground it may tend to incriminate me; furthermore, an inquiry into political beliefs and affiliations.

“Q. Do you mean by that you have a political belief advocating the overthrow of the government by force and violence?

“A. I believe it is obviously not incumbent upon

(Testimony of Frances L. Duffy.)

a witness to elaborate or specify on these questions. I have made my answer, and I am further, I repeat, willing to answer any question that does not border on my political beliefs, affiliations or opinions, or tend to incriminate me.

“Q. Do you know any organization in the County of Los Angeles that has for its purpose the overthrow of the United States government by force and violence?

“A. I would like to consult my attorney. I think we are here to find out an answer on these things. I am not a lawyer; I would like some legal advice.”

Q. Just a minute, Miss Duffy. I think you can skip to page 12, line 21.

A. Yes, sir. [15]

“Q. Mr. Brodsky, did you have an opportunity to talk with your counsel?

“A. Yes, I did.

“Q. Did you have ample time to discuss the matter?

“A. Yes, we did. We had time enough to reach a decision.

“Q. One question was, do you know of any organization in the County of Los Angeles which advocates the overthrow of the government of the United States by force and violence?

“A. I am wondering—It also came to my attention there was another question I believe I answered incorrectly, that was asked me before, on what was my occupation.

(Testimony of Frances L. Duffy.)

"I would like to answer that question, then give an answer in whatever order you prefer.

"Q. I have no preferred order. Did you refuse to answer that question?

"A. I believe I did. I would like to answer that now. I am an organizer.

"Q. Who are you an organizer for?

"A. That question I refuse to answer on the ground it might tend to incriminate me.

"Mr. Carter: You are a great disappointment.

"Q. (By Mr. Carter): Will you answer the question whether you know any organization of the County of Los Angeles which has for one of its announced purposes the overthrow of the government of the United States"—the record says "for," and it should be "by"—"by force and violence?"

Mr. McTernan: I am sorry. I didn't hear that.

The Witness: Apparently there is a typographical error in the record. It says "for force and violence," and I am sure he said "by force and violence."

Mr. Carter: Is there any objection to that?

Mr. McTernan: No.

The Witness: I didn't catch it in my reading it over, your Honor.

"A. On advice and after consultation with my counsel, I would like to answer that I refuse to answer that question on the ground it would tend to incriminate me, and it is an obvious inquiry into my political beliefs and associations.

"Q. Do you believe that the Constitution of

(Testimony of Frances L. Duffy.)

the United States, in permitting the claim of privilege, protects against persons who might attempt to overthrow the government by force and violence and destroy the very document which they rely upon? [17]

“A. I might answer by saying I don’t believe it is my job to instruct the grand jury on what the Constitution of the United States says or does not say.”

Mr. Carter: That is sufficient, Miss Duffy. [18]

* * * *

Q. Miss Duffy, on January 12, 1949, did you also take down the testimony of Frank Spector before the grand jury of this district?

A. Yes, sir.

Q. And did you prepare a transcript of Mr. Spector’s testimony? A. Yes, sir.

Q. I ask you if this is the original copy of that transcript.

A. (Examining transcript): Yes, sir.

Q. Is that a copy also?

A. (Examining transcript): This is a carbon copy of that original; yes, sir.

Q. Was Mr. Spector sworn on that occasion as a witness? A. Yes, he was.

Q. Will you read the transcript, commencing on page 2, line 6, of the examination of Mr. Spector?

A. Yes, sir.

“Q. (By Mr. Carter): Your name is Frank Spector? A. Yes, sir. [21]

“Q. Where do you live, Mr. Spector?

(Testimony of Frances L. Duffy.)

“A. 215 South Soto Street.

“Q. Mr. Spector, this grand jury has been investigating the matter involving the loyalty of government employees. You are not an employee of the United States government, are you?

“A. I am not.

“Q. And you have not been, within the last two or three years? A. I have not.

“Q. You are not one of the subjects under investigation; you are not being investigated. Do you understand that?

“A. Will you repeat it again, please?

“Q. You are not one of the subjects that are being investigated; you are not one of those persons that are under investigation.

“A. Not that I know of.

“Q. I am stating that fact to you, for the record. A. Thank you.

“Q. We want certain information from you, and—let me ask you, are you a citizen of this country? A. I am not. [22]

“Q. You owe certain duties to this country—

“A. (Continued): My application is pending for final papers.

“Q. You desire to be a citizen?

“A. Indeed, sir.

“Q. As far as that is concerned, an alien who has not yet obtained citizenship owes certain duties to the government under which he lives.

“A. Yes.

“Q. One of those duties is an obligation to

(Testimony of Frances L. Duffy.)

cooperate with the grand jury when it investigates matters, and supply information if it is within your knowledge to supply that information to the grand jury. You understand that, do you not?

"A. I do.

"Q. Do you know the official organization of the Communist Party of Los Angeles County?

"A. I am going to decline to answer this question, because it will tend to incriminate me, and I know the Constitution of the United States grants certain rights, and under the Fifth Amendment and the First Amendment, I decline to answer this question because it might incriminate me.

"Q. You have publicly stated, on innumerable occasions, in this county, have you not, that you [23] were a member of the Communist Party?

"A. The same answer to the question.

"A Juror: We can't hear.

"The Witness: Same answer.

"Q. (By Mr. Carter): Until this day, when you came before this grand jury, you have never refused to state heretofore that you were a member of the Communist Party, have you?

"A. The same answer as to the last question.

"Q. Do you know Dorothy Healey?

"A. The same as to the last question.

"Q. Do you know where she can be found or located? A. The same answer.

"Q. Do you know any person in this community who advocates the overthrow of the United States government by force and violence?

(Testimony of Frances L. Duffy.)

“A. I don’t, no.

“Q. Do you know of any organization in this community which has for its purpose the overthrow of the government by force and violence?

“A. The same answer that I gave to the question previous to the last one.”

Q. I now ask you to skip to the bottom of page 5, line 26. [24] A. All right.

“Q. I asked you if you knew Dorothy Healey. Do you know her business or home address?

“A. The same answer.

“Q. Do you know her occupation?

“A. The same answer.

“Q. By ‘the same answer’ you mean——

“A. I refuse to answer this question—pardon me, I decline to answer this question on the ground it may incriminate me.

“Q. Do you know where she can be located?

“A. The same answer.

“Q. Refusal upon constitutional grounds, as I understand, is that right?

“A. I decline to answer the question. Do you want me to reformulate it?

“Q. You have given several answers, and when you say ‘the same answer’——

“A. I will repeat, for the benefit of the reporter, I decline to answer the question on the ground it may incriminate me, being a violation of the constitutional rights under the Fifth and the First Amendments.

(Testimony of Frances L. Duffy.)

“Q. Do you know whether or not Dorothy Healey is married? [25] A. Same answer.

“Q. Do you know her husband’s occupation?

“A. Same answer.

“Q. Do you know her husband’s name?

“A. Same answer.”

Mr. Carter: That is sufficient. At this time we move, as to Frank Spector, that the witness’ claim of privilege as to the questions which he refused to answer is not well founded and that the witness should be required by the court to answer those questions before the grand jury.

The Court: Proceed with the other witnesses and then I will hear Mr. McTernan on behalf of the witnesses.

Mr. Carter: I know your Honor has other matters this morning. Shall we stop at this time?

The Court: No. Go ahead.

Q. (By Mr. Carter): Miss Duffy, did you take down as a reporter for the grand jury on January 12, 1949, the testimony of Irving Caress?

A. Yes, I did.

Q. Did you prepare a transcript of Irving Caress’ testimony before the Federal grand jury?

A. Yes, sir.

Q. And you made a transcript, did you, and a copy of that? [26] A. Yes, sir.

Q. Is that the original and a copy?

A. (Examining transcripts): Yes, it is.

Q. Mr. Caress was sworn to tell the truth before the grand jury? A. Yes, he was.

(Testimony of Frances L. Duffy.)

Q. Will you commence reading at page 2, line 26, of that transcript? A. Yes.

“Q. (By Mr. Carter): Mr. Caress, you are not under investigation; we are not investigating you, as a subject of a criminal prosecution. We merely want some information from you.”

The Court: This was January 12th also?

The Witness: Yes, sir.

The Court: All of these were on January 12, 1949?

The Witness: Yes, sir.

The Court: Very well.

The Witness (Continuing): “You are a citizen of this country, are you not? A. Yes.

“Q. You know that you have an obligation, as a citizen, to supply your government with information that it desires? [27]

“A. Yes, sir.

“Mr. Carter: These proceedings before the grand jury are secret, unless you elect to make them public by refusing to answer questions. If you answer questions, the proceedings are secret and are not published. Of course, if you don't answer the questions, then the transcript of what transpired may be read to the court in seeking an order for you to answer the questions. So you can speak freely before the grand jury, and answer these questions, if you so desire.

“For your information, we are investigating cases involving the loyalty of government employees.

(Testimony of Frances L. Duffy.)

“Q. (By Mr. Carter): You have never been an employee of the government?

“A. Excepting during my service in the Army.

“Q. Never been a civilian employee?

“A. No.

“Q. And are not now employed by the government? A. No.

“Q. These cases involve employees who are alleged to have made false statements to an agency of the government in connection with their employment. [28] That is what we are seeking, and all we are interested in. We want to develop information leading to the proof as to whether the statements that these individuals made are true or false. If it turns out that they made truthful statements, then there will be, of course, no further proceeding. If they made false statements, then the grand jury would have the duty of determining whether or not they are to be indicted. I am speaking of the subjects under investigation, not you people who are called as witnesses.

“Can you tell us the table of organization of the Communist Party of the Los Angeles County?

“A. I refuse to answer such question on the ground it might incriminate me, and is an invasion of my rights under the First and Fifth Amendments, and an inquiry into my political beliefs.

“Q. Do you know who in the Los Angeles County Communist Party setup has knowledge of or is in charge of membership?

“A. I refuse to answer on the same grounds.

(Testimony of Frances L. Duffy.)

“Q. Do you know Dorothy Healey?

“A. I have to refuse to answer that on the same grounds.

“Q. Do you know where she lives? [29]

“A. I refuse to answer on the same grounds.

“Q. Do you know where she can be found or located?

“A. I refuse to answer on the same grounds.

“Q. Do you know her husband’s name?

“A. I refuse to answer on the same grounds.

“Q. Do you know his occupation?

“A. I refuse to answer on the same grounds.

“Q. Do you know any person in this county who advocates the overthrow of the government of the United States by force and violence?

“A. I refuse to answer on the same grounds.”

Mr. McTernan: Pardon me. I didn’t hear that.

The Court: Do you know any person in this country who advocates the overthrow of the government of the United States by force and violence.

The Witness: That is right.

The Court: Is that what you said?

The Witness: Yes, your Honor.

Mr. McTernan: Thank you.

The Witness: I will try and talk a little louder.

The answer was: “I refuse to answer on the same grounds.”

“Q. Do you know any organization in this county which has as its purpose the overthrow of the government [30] by force and violence?

“A. I refuse to answer on the same grounds.”

(Testimony of Frances L. Duffy.)

Mr. Carter: That is sufficient.

At this time the government moves that the claim of privilege made by the witness Irving Caress is not well founded and that the witness be required by the court to answer the questions.

The Court: Very well. Proceed. You have one more?

Mr. Carter: Yes, your Honor.

Q. Miss Duffy, on January 12, 1949, did you also take down the testimony of Robert Blair before the grand jury of this district?

A. Yes, sir, I did.

Q. Did you make a transcript of his testimony and a copy? A. Yes, sir.

Q. Will you check to see if that is the original and a copy of the transcript that you prepared?

A. (Examining transcripts): Yes, it is.

Mr. Carter: I take it that the same arrangement that applied to the first witness, Mr. McTernan, applies to the other three, all the witnesses, that we may use the transcript of the testimony rather than the original notes?

Mr. McTernan: We have no objection to that.

Also our motion that we be supplied with a copy of this [31] also?

By Mr. Carter:

Q. Was Mr. Blair sworn as a witness before that grand jury? A. Yes, sir, he was.

Q. Will you begin reading the transcript, page 3, line 14? A. Yes.

“Mr. Carter: Mr. Blair, you are not under in-

(Testimony of Frances L. Duffy.)

vestigation by this grand jury. This grand jury is not investigating you, or attempting to make a case against you, or in any way affect you, except we want certain information.

“The matters before this grand jury concern a series of subjects who are alleged to have made false claims to the government, a series of subjects who are employees of the government and who are alleged to have made false claims or statements to the government or an agency of the government having jurisdiction over the matter.

“Our purpose is to find out whether the statements they made were true or false, and, specifically, to find out whether or not these government employees were members of certain organizations at the time they made these statements. [32]

“Do you understand what I have said to you?

“The Witness: I do.

“Mr. Carter: There has been a lot of propaganda put out, that people are being called before the grand jury to be made stool pigeons of.

“I want to tell you that grand juries, since the days in England where grand juries originated, have called people in and forced them to testify even against friends and relatives; so you have no privilege to stand on if you are trying to protect someone else.

“You understand that statement?

“The Witness: I do.

“Mr. Carter: Now, the Constitution provides that a person is not required to incriminate himself,

(Testimony of Frances L. Duffy.)

and you may raise the claim of privilege. However, do you understand that you are not the final judge of whether your claim of privilege is good, but that some judge finally decides whether it is a valid claim?

“The Witness: I understand that.

“Mr. Carter: I also inform you that the proceedings before the grand jury are secret, that what you say before the grand jury is secret, unless you elect to make it public. In other words, [33] if you testify before us and answer the questions that are asked you, that is secret information. If you decline to testify, of course the proceedings may be read before the court, in an effort to secure an order compelling you to testify. Therefore, if you testify, your testimony will be confidential and will not be divulged.

“Do you understand that?

“The Witness: I do.

“Q. (By Mr. Carter): Now, these government employees that we are concerned with, one of the issues involved, is whether or not they were members of the Communist Party of Los Angeles County; and I would like to ask you if you know of the table of organization, or who the officials of the Communist Party of Los Angeles County are.

“A. I am compelled to answer that I believe that that question would involve a possible self-incrimination, and therefore I refuse to answer; also, on the further ground that it might possibly tend to

(Testimony of Frances L. Duffy.)

inquire into my political beliefs and associations, under the First Amendment.

“Q. Do you know who or what officer of the Communist Party of Los Angeles County is in charge of membership, or has knowledge of the membership [34] rolls in this county?

“A. I must repeat my answer, on the same ground.

“Q. Do you know Dorothy Healey?

“A. I must repeat the same answer again, the same grounds, that it invades my political beliefs and also the right of political belief, as given under the First Amendment.

“Q. We have had a subpoena out for Dorothy Healey. Do you know where she can be located or can be found?

“A. I refuse to answer that question on the same ground.

“Q. Do you know her business or home address?

“A. I refuse to answer that question likewise on the same ground given.

“Q. Do you know her business or occupation?

“A. Likewise I refuse to answer that question for the same reasons.

“Q. Do you know what her husband's name is?

“A. I must repeat again that I refuse to answer that question on the ground of possible self-incrimination, and also the fact that it can't be possibly an inquiry into my own political beliefs and associations. [35]

(Testimony of Frances L. Duffy.)

“Q. Do you know his occupation, her husband’s occupation?

“A. I must repeat the answer as given above to the former question.

“Q. Have you seen Dorothy Healey recently?

“A. Again I must repeat the same answer, on the same grounds as previously stated.

“Q. Supposing I asked you, have you seen Philip Bock recently, what would your answer be?

“A. I would answer ‘Yes.’

“Q. You don’t feel that that would incriminate you? A. No, I don’t.

“Q. Have you seen Henry Steinberg recently?

“A. Yes, I have. I have seen him in the course of this inquiry.

“Q. Do you know Ben Dobbs?

“A. I have seen him in the course of this inquiry.

“Q. Do you know Elizabeth Glenn?”

The Court: Elizabeth who?

The Witness: Glenn, G-l-e-n-n.

“A. I refuse to answer that question likewise on the ground it might incriminate me.

“Q. Do you know Mrs. Houdek? (H-o-u-d-e-k).

“A. I refuse to answer that question likewise on the ground it might incriminate me.

“Q. In other words, if the person has been subpoenaed and subject to subpoena, you have no hesitancy in saying you know him, or have seen him, but if the person has not yet been subpoenaed or ar-

(Testimony of Frances L. Duffy.)

rested by the marshal on a bench warrant, you refuse to answer. Do I draw the proper conclusion?

“A. No, you are drawing the line whether the person has received a subpoena or not. I know, from the conduct of the hearing, if he is likewise one of the witnesses testifying before this inquiry. Any further knowledge or lack of knowledge on my part, I refuse to——

“Q. Do you know Mrs. Sherman?

“A. Mrs. Sherman?

“Q. Yes.

“A. I believe she is one of the witnesses.

“Q. Do you know her?

“A. I know her through this inquiry.

“Q. Do you know Mrs. Forest?

“A. I believe she is one of the witnesses, and likewise I am acquainted with——

“Q. You don't feel answering the question that [37] you know these people would incriminate you?

“A. I feel it would incriminate me if I hadn't known them through the conduct of this trial or hearing.

“Q. In other words, it hinges somewhat on how you know these people, is that the basis of your answer? If you know a person in a certain way you would answer the question, and if you know them in another way, you wouldn't; is that what you are getting at?

“A. No. I think it is knowledge on our part of the way to conduct ourselves on the basis of con-

(Testimony of Frances L. Duffy.)

sultations with attorneys hired to advise us of our constitutional rights; therefore, we have a basis of being acquainted——

“Q. Let’s go back. You admit you know Ben Dobbs?

“A. I know him through this inquiry. Any further knowledge of him I refuse to answer on the ground of self-incrimination.

“Q. Do you know Ben Dobbs?

“A. Through this inquiry.

“Q. You know also, do you not, that Ben Dobbs——”

Mr. Carter: Just a moment. Omit that and go to page 9, [38] line 12.

The Witness: Yes.

“Q. Do you know any person in the County of Los Angeles who advocates the overthrow of the government of the United States by force and violence?

“A. I refuse to answer that question on the same grounds. I feel it is an invasion of my political rights; it is a political question, and an invasion of the First Amendment of the Constitution, and also can lead to self-incrimination.

“Q. Do you know any organization in the County of Los Angeles which has the announced purpose of the overthrow of the government of the United States by force and by violence?

“A. I refuse to answer that likewise on the same grounds.”

Mr. Carter: That is sufficient.

At this time the government moves that the witness be required to answer the questions asked which he refused to answer upon the ground that his claim of privilege is not well founded. [39]

* * * *

Mr. McTernan: I forget where we are now, Mr. Carter. Have you completed your presentment?

Mr. Carter: I have completed my presentation of my motion. The question now is whether you have any valid reason to show that these questions would tend to incriminate these witnesses. [40]

Mr. McTernan: I have a large number.

The Court: Any different than these heretofore advanced in connection with the other matters?

Mr. McTernan: I think they will be. I will have a little trouble straightening out my notes as to what was said, but I am sure that there will be matters which include matters which have already been urged to you and in addition others.

Mr. Carter: There are really only two questions that the government is concerned with, Mr. McTernan and your Honor. The questions are identical with the questions previously asked in other proceedings, as to the table of organization of the Communist Party. There is one question that varies somewhat in that specifically the question asked was, "Do you know who has charge of the membership rolls?" However, that is no major departure from other questions that have been asked.

The two really new questions that are different from other proceedings are the two questions: "Do you know the name of any person in this county who

advocates the overthrow of this government by force and violence?" and "Do you know of any organization in this county that advocates the overthrow of the government by force and violence?"

Three of the witnesses refused to answer that. The witness Frank Spector answered. [41]

The Court: He answered one question. He answered the question that he did not know any person.

Mr. Carter: And I think he also answered that he didn't know any organization.

The Court: No, you did not ask the other question, according to my notes. [42]

* * * *

Los Angeles, California

February 18, 1949; 9:30 o'clock a.m.

The Court: The question is when I will be able to go on with the matter. In the case on trial the government is putting on its case and they said they had four more witnesses. I do not know whether they will finish today or not. I hope they can at least finish the evidence. If that is the case I would have to put this matter over until next Wednesday—Tuesday being Washington's Birthday—and set it then. Is the Grand Jury returning next Wednesday?

Mr. Carter: This Grand Jury is not returning next Wednesday.

The Court: Is there a stipulation on file that the jury need not be present?

Mr. Carter: A letter has been written, which I intend to file with the Court.

The Court: I think perhaps the letter should not

be filed. I think that I will accept Mr. McTernan's oral stipulation.

Mr. McTernan: I have so stipulated with Mr. Carter on the basis of the letter.

The Court: Very well. The minutes will note that there is an oral stipulation that the jury need not be present at this time for the presentation of the matter.

* * * *

Los Angeles, California;

February 23, 1949; 9:30 o'clock a.m.

The Court: I think, Mr. McTernan, probably it would lead to orderly procedure and expedition as well if you would present your defenses, whatever defenses you have, jointly and then whatever distinctions you claim there is between the different questions of the different witnesses, to point that out, so we can proceed as if it were one proceeding. There will be separate orders, however, as to each of the witnesses if orders are made.

Mr. McTernan: Very well. [58]

* * * *

The Court: Mr. McTernan, Mr. Carter has handed up to me what purports to be a verbatim transcript of the testimony before the grand jury on January 12, 1949, of Irving Caress, Robert Blair, Merle Brodsky and Frank Spector. I have read them all the way through.

Is it your desire, on behalf of these defendants and as [70] defensive matter to the request or instructions to answer the questions, that the entire transcripts be put into the record?

Mr. McTernan: It is, your Honor.

The Court: It is so ordered.

Mr. McTernan: Now mechanically, your Honor, how will this be done, simply physically incorporated as exhibits, read into the transcript, or how?

The Court: I do not care. It can be read into the record or filed as exhibits.

Mr. Carter: If you file them as exhibits it will entail less work.

Mr. McTernan: I have no objection to that. I would like an opportunity to examine them now before I go ahead so I may utilize whatever additional material there is in there in addition to what has already been put into this record.

The Court: It does not look to me to be anything but argument between Mr. Carter and the witnesses.

They will be marked as exhibits, Irving Caress as A, Robert Blair as B, Merle Brodsky as C and Frank Spector as D.

(The transcripts referred to were marked Defendants' Exhibits A, B, C and D respectively and received in evidence.)

The Court: Are you through with this witness?

Mr. Carter: I am.

Mr. McTernan: No, I am not, your Honor. [71]

Q. Miss Duffy, at any time on January 12, 1949, or at any other time before the grand jury at which time you were the official reporter, did Mr. Carter or any other representative of the United States Attorney's office ask questions or make statements in which he described Dorothy Healy as the organizing

(Testimony of Frances L. Duffy.)

secretary of the Los Angeles County Communist Party?

Mr. Carter: Objected to upon the ground that the transcripts are now in evidence and they are the best evidence of what transpired, and speak for themselves.

The Court: The objection is sustained.

Mr. McTernan: May I state my purpose?

The Court: I think I can understand your purpose. You stated it I think probably fifteen times.

Mr. McTernan: I simply want to point out that we understand that there is before the grand jury information identifying Dorothy Healy as organizing secretary of the Los Angeles County Communist Party, and that this is a legitimate part of the setting in which the questions were asked these witnesses and is therefore important, material, relevant evidence to be considered by this court in determining whether or not they are compelled to answer the questions.

The Court: The objection is sustained. You are not entitled to have a disclosure of the entire investigation before the grand jury, but only a disclosure relating to the [72] circumstances of these witnesses.

Mr. McTernan: We are only asking for information going to the setting of these witnesses and we submit, under the Zwillman case, which has heretofore been cited to your Honor, that we are entitled to that information.

Q. Miss Duffy, on January 12, or at any other time when you were the official reporter before the

(Testimony of Frances L. Duffy.)

grand jury, did Mr. Carter or any other representative of the United States Attorney's office ask questions or make statements in which Phil Bock was described as youth director of the Los Angeles County Communist Party?

Mr. Carter: Objected to on the ground that the transcript of the examination of these witnesses is the best evidence; that it is incompetent, irrelevant and immaterial.

The Court: The objection is sustained.

Any other inquiry than that now before the court as to these questions and these witnesses is immaterial.

By Mr. McTernan:

Q. The same question as to Harry Kasinowitz.

The Court: It is not only immaterial but it would certainly be a frustration of the law for a witness to come in and compel, when he is cited to answer a question whether or not he might be incriminated, the complete disclosure on the part of the government of any investigation that they might make. [73]

Mr. McTernan: We respectfully submit to your Honor—

The Court: It would thwart and make ridiculous the entire processes of the grand jury in a criminal investigation.

Mr. McTernan: We respectfully submit to the court that the ruling which deprives the witnesses of this information frustrates their constitutional rights because they are entitled to have this information in order to show the setting of the questions so

(Testimony of Frances L. Duffy.)

that the peril to them may be explained to the court, and this matter we consider to be settled law in view of the ruling of Judge Hand in the Zwillman case.

The Court: On the other hand it would frustrate and destroy the Constitution if every witness called before a grand jury can do what you are now seeking to do.

Mr. McTernan: We submit that the interests of the grand jury are second to the Constitution.

The Court: It is not the grand jury, it is the country. The grand jury is part of the laws of the land and part of the machinery for maintaining and sustaining the Constitution of the Constitution of the United States.

Mr. McTernan: The Fifth Amendment is part of the law of the land too by which both courts and grand juries are bound, and we submit that those courts and grand juries are required to observe the requirements of these constitutional amendments and permit sufficient disclosure of information that witnesses may be properly protected in the rights which the [74] Constitution gives them. This appears to be another attempt on the part of the United States Attorney to save the Constitution by destroying it, and these objections are designed deliberately to destroy the constitutional privilege because they foreclose to these witnesses information which is essential to the preparation of their defense. And the United States Attorney knows that and the Department of Justice knows that, and the Fifth Amendment is simply being made a mockery of by their

(Testimony of Frances L. Duffy.)

position that this information is confidential. It is not confidential, and the government, as the Zwillman case points out, must take its choice, either to disclose the information or to withdraw the question.

The Court: Yes, I am familiar with the Zwillman case and also the Constitution. You cannot save the Constitution by destroying it. Proceed.

By Mr. McTernan:

Q. The same question, Miss Duffy, as to Elizabeth Glenn.

Since there has been so much colloquy I will reframe it and ask this question:

Did Mr. Carter or any other representative of the United States Attorney's office, on January 12, 1949, before the grand jury or at any other time when you were an official reporter before the grand jury, make a statement or ask a question in which Elizabeth Glenn was described as an officer [75] or representative of the Los Angeles County Communist Party?

Mr. Carter: Same objection as heretofore made.

The Court: Same ruling. Objection sustained.

By Mr. McTernan:

Q. Same question as to Julia Spector Christensen Houdek.

Mr. Carter: Same objection as heretofore made.

The Court: Same ruling. Objection sustained.

By Mr. McTernan:

Q. Same question as to Merle Brodsky.

Mr. Carter: Same objection.

The Court: Same ruling. Objection sustained.

(Testimony of Frances L. Duffy.)

By Mr. McTernan:

Q. Same question as to Frank Spector.

Mr. Carter: Same objection as heretofore made.

The Court: Objection sustained.

By Mr. McTernan:

Q. The same question as to Robert Blair.

Mr. Carter: Same objection.

The Court: Objection sustained.

By Mr. McTernan:

Q. Same question as to Irving Caress.

Mr. Carter: Same objection.

The Court: Objection sustained.

Mr. McTernan: Now, if your Honor please, we are not in [76] a position to make an offer of proof respecting these matters because we obviously don't know what went on in the grand jury room.

The Court: You do know right here.

Mr. McTernan: We know what went on on January 12th. This investigation, as your Honor knows, has been going on since at least October 25, 1948. We have reason to believe that it has been explained to the grand jury that the various persons whose names I have mentioned in the last series of questions have been identified to the grand jury by representatives of the government, to wit, Mr. Carter or Mr. Goldschein, or some other attorney connected with the Department of Justice, and that these people have been identified in approximately the capacities I have indicated in my questions.

We ask that the court either permit this witness to answer the questions or that the court itself examine the transcript of the grand jury proceedings beginning with October 25, so far as this investigation

(Testimony of Frances L. Duffy.)

is concerned, and determine for itself whether or not the persons whom I have mentioned in these questions, beginning with Dorothy Healy down through Irving Caress, have been so described in questions put by a representative of the Department of Justice or statement by one of them.

Mr. Carter: I very humbly suggest, if counsel is interested in having the record show the capacity of these people, [77] that he no doubt has available very competent proof and very direct proof on those very issues. I don't think he should have any difficulty in being able to identify them.

Mr. McTernan: If Mr. Carter has any information he is required under the Constitution to make it known to this court so that the court may make a proper determination of these questions and so that the witnesses' constitutional privilege will not be sacrificed to official whim.

The Court: No, Mr. Carter is not required to prove on this hearing that they are members of the Communist Party. You are the one who is raising that question.

Mr. McTernan: We submit he is.

The Court: The inquiry before the grand jury was stated by Mr. Carter—it has been stated publicly and I think it was stated in the briefs on appeal, and as stated to these witnesses as they came into this grand jury room—that it concerns the investigation of people who are presently employees of the Federal government. And in one of the transcripts, I believe, it states the loyalty of employees. I think there is no doubt that this investigation was com-

(Testimony of Frances L. Duffy.)

menced and it is being continued by the grand jury and the United States Attorney to ascertain whether or not there has been violation by an employee of the United States government in making an oath, and it is so entitled in one of these proceedings, a false oath or violation of Section— [78] what is it, Mr. Carter?

Mr. Carter: Title 18, 1001.

Mr. McTernan: Your Honor, may I interrupt a moment to point out on page 34 of the transcript where he specifically points out—

The Court: Which transcript?

Mr. McTernan: The court transcript of February 11—in which he further points out that one of the issues that the grand jury is concerned with is whether or not these government employees were members of the Communist Party.

The Court: That is correct. Yes. Let us assume that. How, then, would be the best way to find out if they are members of the Communist Party?

Suppose you wanted to find out whether or not somebody was an officer of a corporation, would it be logical to subpoena the corporation officials in and ask them whether or not they are an officer of that corporation?

Mr. McTernan: It certainly would.

The Court: The same thing would be true of the Communist Party.

Mr. McTernan: That is not what Mr. Carter has done. Mr. Carter is trying to tie people who are not those officers in with the Communist Party in order to tie them in in such a way that they can bring

(Testimony of Frances L. Duffy.)

indictments against them, or at least subject them to risk that such indictments will be brought. [79]

Mr. Carter knows who has custody of the membership rolls of the Communist Party. He won't admit it on this witness stand but he will admit it outside the courtroom. But he won't subpoena that person.

Mr. Carter: Mr. Ternan, those are pretty broad statements. I have sat back and listened to your statements. I have certain subpoenas out and if you have that information I would be glad to have you supply it.

Mr. McTernan: Will you stipulate—

The Court: You mean supply the information as to where the person is?

Mr. Carter: Yes.

The Court: As to who has the records of the Communist Party?

Mr. Carter: Yes.

Mr. McTernan: Will you stipulate that you have issued a subpoena for Dorothy Healy?

Mr. Carter: That is correct.

Mr. McTernan: You have? Have you caused a bench warrant to be issued for her?

Mr. Carter: I don't know whether a bench warrant has been issued or not for Dorothy Healy.

The Court: No, there is not. These are the bench warrants here, Mr. Clerk?

The Clerk: Yes. [80]

Mr. Carter: I have several subpoenas issued for Dorothy Healy.

And, by the way, while we are having a little colloquy, I would like to have the record show this,

(Testimony of Frances L. Duffy.)

that on the last session before this grand jury, which occurred on Friday, February 18, 1949, I subpoenaed in four of the subjects who were the subjects of this inquiry and the subjects were offered an opportunity to testify before the grand jury if they desired to sign a waiver. They were told very frankly they would not be forced to testify against themselves. And two of those subjects retained you as attorney, Mr. McTernan.

The Court: What is that?

Mr. Carter: Two retained Mr. McTernan as attorney and appeared through Mr. McTernan.

I mean Mr. McTernan knows, in fact, who are the subjects of the inquiry because he represented two of them up before the grand jury.

Mr. McTernan: That is all very interesting, but I thought we were on a motion to compel certain witnesses to answer questions.

The Court: That is what I thought until you started talking about having all the proceedings before the grand jury here, and the like. What is your present motion as to what you request?

Mr. McTernan: I am trying to cross-examine the witness. [81]

The Court: What question is pending?

Mr. McTernan: I have been trying to explain it to you.

The Court: Ask her a question.

Mr. McTernan: Certain questions have been raised by my line of inquiry, that we are entitled to know from the grand jury record what the setting was in which these questions were asked, and specifically

(Testimony of Frances L. Duffy.)

that the persons about whom these witnesses have been interrogated have been identified to the grand jury as having some official connection with the Los Angeles County Communist Party. Your Honor is apparently ruling that we are not entitled to this.

The Court: I have ruled that you are entitled to no other testimony before the grand jury in connection with these questions except the complete transcript of the testimony of these witnesses at the time the questions were asked.

Mr. McTernan: In view of your Honor's ruling I have no further questions of this witness.

The Court: Step down.

(Witness excused.)

Mr. McTernan: Call Mr. Carter.

Mr. Carter: May Miss Duffy be excused?

Mr. McTernan: Yes.

The Court: You are excused. [82]

JAMES M. CARTER

called as a witness by and in behalf of the respondents, having been first duly sworn, was examined and testified as follows:

The Clerk: Will you state your name?

The Witness: James M. Carter.

Direct Examination

By Mr. McTernan:

Q. You are the United States Attorney for this district, Mr. Carter? A. That is right.

Q. And you have been presenting to the grand jury since October 25, 1948, have you not, certain

(Testimony of James M. Carter.)

matters connected with a purported investigation of the loyalty of certain government employees?

A. Strike out the word "purported" and I will agree with your statement.

Mr. McTernan: I think I have covered this matter in connection with another record, your Honor. I think we can get it in when we get to the motion which I will make incorporate that record.

Mr. Carter, either you or some representative of your office or the Department of Justice, has described Dorothy Healy to the grand jury as the organizing secretary of the Los Angeles County Communist Party in connection with [83] that investigation, have you not?

Mr. Carter: Objected to on the ground that it calls for proceedings before the grand jury which are confidential proceedings except in so far as they are revealed in court; and I object upon the further ground that it indirectly inquires into information that might be in the information of the prosecutor for this district; and on the further ground it is incompetent, irrelevant and immaterial.

The Court: Objection sustained on all grounds.

By Mr. McTernan:

Q. You or some representative of your office or the Department of Justice has, in connection with this investigation, identified Ben Dobbs as labor secretary of the Los Angeles County Communist Party, is that not so?

Mr. Carter: Objected to on the same grounds as heretofore stated, and on the ground it is ambiguous, uncertain and indefinite.

(Testimony of James M. Carter.)

The Court: Objection sustained.

Mr. McTernan: On the last ground also, your Honor? If it is I want to reframe it.

Mr. Carter: Your question was, "some person of the Department of Justice," Mr. McTernan. There are thousands of people in the Department of Justice. I couldn't speak for them.

The Court: Objection sustained. [84]

By Mr. McTernan:

Q. You, Mr. Carter, or one of your deputies or a representative of the Department of Justice in your presence, has identified to the grand jury in the course of this inquiry Ben Dobbs as labor secretary of the Los Angeles County Communist Party, is that not so?

A. I think there is something in the transcript that has been filed which is in evidence, but I object upon the same grounds heretofore stated as to these questions as far as I am concerned.

The Court: Except for the transcripts that are in evidence and the testimony that is disclosed by them, the objection is sustained.

Mr. McTernan: So that my question will be clear, I am directing it to the period before January 12, 1949.

Mr. Carter: Objected to upon all the grounds heretofore stated.

The Court: Sustained.

By Mr. McTernan:

Q. You or one of your deputies, or a representative of the Department of Justice in your presence, has identified to the grand jury in connection with

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this inquiry Phil Bock as youth director of the Los Angeles County Communist Party, is that not so?

A. Except as revealed in the transcripts offered as [85] Exhibits A to D, objected to upon all the grounds heretofore stated to this line of questions.

The Court: Objection sustained.

Mr. McTernan: May it be understood that my question goes to the period prior to January 12, 1949?

Mr. Carter: On all the grounds heretofore stated as objections to this line of questions.

The Court: Sustained.

By Mr. McTernan:

Q. And you or one of your deputies, or a representative of the Department of Justice in your presence, has identified to the grand jury in connection with this inquiry Harry Kasinowitz as now or heretofore having been legislative director of the Los Angeles County Communist Party, is that not so?

Mr. Carter: Same objections as heretofore made.

The Court: Same ruling. Objection sustained.

Mr. McTernan, I think that the ruling I have heretofore made is clear on that subject without repeating each one of these questions.

Mr. McTernan: May it be stipulated, your Honor, that I have asked the same questions about the same individuals that I asked Miss Duffy about and that the objections were made and the rulings entered?

The Court: Is that agreeable? [86]

Mr. Carter: That is satisfactory with me.

The Court: The stipulation is approved.

Mr. Carter: Except we might get a little informa-

(Testimony of James M. Carter.)

tion about some of these people from this line of questions.

The Court: Then you do not stipulate?

Mr. Carter: I will so stipulate, your Honor.

The Court: Very well.

Mr. McTernan: The only difference between us is that I am willing to state mine and you are only willing to state yours out of court where it won't do the government any harm.

* * * *

Mr. McTernan: If the court please, in order to save time may the record show that I have asked Mr. Carter whether he has information along the line of the identity of those various people I mentioned in the questions to him, running from Dorothy Healy through Irving Caress, and I take it the same objections will be made and the same rulings will be made?

Mr. Carter: That is satisfactory.

The Court: Very well. So ordered.

Mr. McTernan: Now we ask that there be incorporated into this record, your Honor, the record of the entire proceedings on October 25, 1948.

The Court: In the record of the proceedings on October 25, the first motion there, and which was made repeatedly through the course of the day and evening, was for a continuance on the ground—

Mr. McTernan: We will eliminate the continuance.

The Court: You eliminate that?

Mr. McTernan: Yes.

The Court: Except for all of the motions made and for a continuance on that date?

Mr. McTernan: Yes.

The Court: Is there any objection?

Mr. Carter: No objection.

The Court: So ordered.

Mr. McTernan: And we ask that the entire record of the proceedings involving the criminal contempt prosecution against Dobbs, Kasinowitz and Steinberg on December 14 and 15, 1948, but for the motions for a continuance, be incorporated into the record here.

Mr. Carter: There is only one objection to that. Mr. McTernan, as a part of that record, stated that he had evidence that the Attorney General or somebody in the Department of Justice had made a statement that they had contrived a new method to trap Communists, and subsequently when he filed the document, which he did after the hearing was over by letter to the Clerk, I believe, and a copy to me, it is apparent that the statement was by some other person other than the Attorney General or some official of the Department of Justice.

The Court: It was a statement by a columnist.

Mr. Carter: It was a statement by a columnist. I checked the record in that case and I find that his representations as to that article tying in with somebody in the Department of Justice—

Mr. McTernan: That is not—

Mr. Carter: Let me finish.

Mr. McTernan: Excuse me.

Mr. Carter: So with that modification, that that statement was made by a columnist and not somebody in the Department, I have no objection.

Mr. McTernan: If the court please, I thought I had identified that article as a newspaper article, quoting or purporting to quote certain officials of the Department of Justice. That was the only purpose for which I offered it.

The Court: Let me see the exhibits, Mr. Clerk.

(The exhibits referred to were passed to the court.)

Mr. Carter: I don't have it.

The Court: It is Exhibit K in No. 20403, 20404 and 20405, Kasinowitz, Steinberg and Dobbs, and was filed under cover of a letter dated January 6, 1949.

It purports to be a clipping from the Rocky Mountain News, Friday, October 22, 1948: "Nationwide Drive on Reds is Given Pre-Election Tinge, by Tony Smith, Scripps-Howard Staff Writer," reading:

"Washington, October 21. A nationwide crack-down on the 'open' Communist Party leadership began gathering steam today."

Then it purports to quote somebody:

"The department cannot pin-point the places where grand juries are convened to hear charges involving Communists. It can say only that there are a number."

That is the only quotation in the article. The rest of it says:

"House spy hunters believe Attorney General Tom Clark is sending many cases contained in the FBI files to grand juries all over the country. They say the drive is a pre-election gesture to counter Republican charges that the Truman Administration has failed to meet the threat of Communism with sufficient legal action.

“One expert for the House Un-American Activities Committee concedes * * *”

Mr. Carter: I think right in there, your Honor, is the statement that Mr. McTernan is referring to.

The Court: “He explained the trick is to subpoena the Communist, ask him questions he can’t answer and then cite him for contempt when he refuses.” That is not attributed to anybody. It certainly is not attributed to the Attorney General. And there has been ample time from December, whatever date it was, the middle of December, until now, February 23rd, to have taken a subpoena or secured an affidavit or taken the testimony of Mr. Smith by deposition.

It also states: “Gus Hall, Ohio Communist chairman, says the five Red officials subpoenaed for appearance before the Cleveland grand jury today will go to jail before they turn over the party membership lists. Hall was the only Ohio Communist leader who didn’t receive a summons.”

I want the record to show that if he is related to me I am unaware of it.

Mr. McTernan: Your Honor, the first five paragraphs are obviously information attributed to representatives of the Department of Justice.

The Court: But that is not evidence. That is the rankest kind of hearsay.

Mr. McTernan: Your Honor has already rejected this exhibit.

The Court: No, I have admitted it in evidence.

Mr. McTernan: The matter was rejected along with everything else I offered on December 15th on a number of grounds, the main ground of which was immateriality.

The Court: It is marked here in evidence.

Mr. McTernan: If it was, it was an error of the Clerk.

Mr. Carter: Provision was made that it might be filed.

The Court: Yes, I think that is right.

Mr. McTernan: In the rejected file.

Mr. Carter: What I am objecting to in the record involving Kasinowitz, Steinberg and Dobbs was Mr. McTernan's statement that the Department of Justice made that comment.

The Court: He said that he had proof.

Mr. Carter: That is right.

The Court: Now as far as that is concerned, it is only an offer of proof.

I will ask Mr. McTernan now if the proof that you refer to, and as I recall your statement you have it from a Denver newspaper, if the so-called proof you referred to is this Exhibit K for identification.

Mr. McTernan: Since so many statements have been attributed to me here this morning, may I have a chance to read the transcript and see what it was I said?

The Court: Surely.

Mr. McTernan: I said at page 191 of the transcript that I had only one other item of evidence to offer and I hadn't brought it with me through oversight and I would file it as a clipping from a newspaper and I wanted an opportunity to—

Mr. Carter: Wait a minute. A "clipping concerning a release put out by the Department of Justice."

Mr. McTernan: Yes.

Mr. Carter: A release put out by the Department of Justice.

Mr. McTernan: "It is a copy of one additional newspaper clipping concerning a release put out by the Department of Justice with reference to grand jury inquiries against Communism, and I would like the opportunity to make an offer of that at whatever time best suits the convenience of the court."

Then on Mr. Carter's suggestion I described it from memory. He offered an objection at page 193 and the objection was sustained.

I was then given permission to supply a copy of the clipping, to go into the rejected exhibit file.

The Court: It will be marked for identification. The Clerk will correct that now. It is not in evidence. It was only marked for identification.

* * * *

Mr. McTernan: I offer, your Honor, the record of the— [93]

The Court: I think the whole record can go in. If Mr. McTernan made that statement and he wants it in the record, and this is all he has to back it up with, that is that.

Mr. Carter: I am satisfied. I raised that point and I am satisfied. No objection to the record going in.

The Court: So that all of the record in the proceedings in the criminal contempt matter, *United States v. Kasinowitz, Steinberg and Dobbs*, 20403, 20404 and 20405, will be deemed as part of the record in defense offered in connection with the objections to the witnesses to answer these questions.

Mr. McTernan: Thank you.

Now, your Honor, in connection with our claim of privilege against self-incrimination—

The Court: Do you have any other evidence to offer?

Mr. McTernan: I have certain matters which I want to call to your Honor's attention. I think they are all official records but I want to list them here.

The Court: Very well.

Mr. McTernan: In connection with our claim of the privilege against self-incrimination to questions the effect of which would tie these witnesses in with the Communist Part or with officers of the Communist Party, and on this we make the claim of course with reference to the questions, "Do you know," or "Can you tell us the table of organiaztion [94] of the Los Angeles County Communist Party," "Do you know who in the Los Angeles County Communist Party setup has knowledge of or had charge of membership rolls"—all the questions relating to Dorothy Healy and the questions relating—

The Court: You have the table there that Mr. Carter prepared, have you?

Mr. McTernan: I have the table, your Honor. I cannot accept the table as the correct reflection of the questions put in all instances because they are not.

The Court: Let us take question No. 1, "Do you know the official organization (I think the question was asked occasionally the table of organization or the organizational setup) of the Communist Party in Los Angeles County?" I have already ruled in connection with all of the other witnesses in connection with that question, as well as question No. 3, question No. 4, question No. 5, question No. 6, question No. 7, question No. 8, question No. 13, question No.

14—those questions have been asked heretofore of other witnesses, and unless there is some different defense offered by these witnesses than that which was heretofore offered by the previous witnesses, it would seem to me that my ruling would have to stand.

Mr. McTernan: I have been trying to state some additional material for your Honor to consider in connection with that claim, and I was trying to tie it in to those questions, [95] as well as the question on Mr. Carter's chart numbered 12, "You have publicly stated, on innumerable occasions in this county, have you not, that you were a member of the Communist Party?"

I wanted to call the court's attention to the statements by Mr. Carter which appear at pages 10, 32 and 34 of the court transcript of February 11, 1949, in this proceeding in which his purpose before the grand jury is stated, and particularly at page 34 where he, for the first time in these proceedings, so far as I recall at this time, admits that what he is trying to get before the grand jury is this proof of membership of certain people in the Communist Party and he wants the Communist membership records for that purpose.

So that it is manifest, we submit, in view of Mr. Carter's statements, that his purpose is to tie these witnesses in with the Communist Party in order to find out who the officers are and who the members are and that such a tie-in subjects these witnesses to a reasonable risk of prosecution under the Smith Act in a manner similar to that prosecution now going on in New York City, in which people are being prosecuted because they formed the Communist

Party and because they belong to it, and for no other reason.

We ask the court—perhaps Mr. Carter will stipulate to this—that there is now on trial in New York—I will [96] reframe it this way—that eleven of the twelve defendants in the indictments which are already in this record now by virtue of the court's ruling this morning are now on trial in New York on those indictments.

Mr. Carter: I don't understand that the trial has started. I understand there are still preliminary skirmishes after five weeks.

Mr. McTernan: I understand that that is part of the trial.

The Court: Eleven what?

Mr. McTernan: Eleven of the defendants. There was a severance as to the defendant Foster, your Honor, because of his health. The remaining eleven defendants are now standing trial in New York on the indictments which are in evidence here.

Do you stipulate to that, Mr. Carter?

Mr. Carter: I will stipulate that the case was called as against eleven of them and they haven't yet started to pick the jury. The case is pending back there on preliminary delaying tactics.

The Court: How could that be material unless the Communist Party of Los Angeles County were connected with the Communist Party which these men in New York are charged with organizing and advocating the overthrow of the United States government by force and violence? Is that conceded?

Mr. McTernan: I cannot believe that either Mr. Carter or the court is serious in questioning the lack

of connection between the Communist Party in Los Angeles County and the Communist Party of the United States. In any event there are some legislative findings in the record here to the effect that the Communist Party in Los Angeles is a subdivision of the Communist Party of the United States. Mr. Carter knows that to be the fact, and I don't think this is any serious problem.

The Court: Would you say it was a fact of which the court could take judicial notice?

Mr. McTernan: I don't think it is a fact of which the court may take judicial notice, no. I don't think the court can take judicial notice of the subdivisions of the Democratic or Republican parties either. If the court could I think it could take judicial notice of this.

The Court: Do you concede then, for the purposes of objection to these questions, that the Communist Party of Los Angeles County is part of the Communist Party which is referred to in the indictments now pending in New York?

Mr. McTernan: Yes.

The Court: You concede that?

Mr. McTernan: I certainly do.

The Court: Very well.

Mr. McTernan: Now with reference to the questions [98] dealing with Dorothy Healy and Julia Spector Christensen Houdek, we wish to call the following matters to your Honor's attention in support of an additional ground of the claim of the privilege against self-incrimination.

Mr. Carter has stated in open court this morning that several subpoenas have been issued to Dorothy

Healy. The court records in Case No. 8838-PH disclose that a bench warrant has been issued for the arrest of Julia Spector Christensen Houdek, and the court records in a number of cases, including three of those here today involving Caress and Blair and Brodsky, in which bench warrants were also issued, reveal that the United States Attorney charges the existence of a conspiracy to obstruct justice on the part of persons for whom subpoenæes have been issued for this inquiry. And the language in which this charge is made, your Honor, is as follows—and I am reading now from the application for a bench warrant signed by Mr. Carter and Mr. Goldscheine on November 8, 1948, in connection with Julia Spector Christensen Houdek, and my information is, your Honor, that similar representations, in fact, identical representations, were made in connection with all cases, in that application for bench warrants in connection with this grand jury inquiry contained the identical language (it is a mimeographed document that is used in all of them):

“Said motion is based upon the further ground [99] that said witness is deliberately avoiding service of subpoena, and is deliberately impeding the administration of justice and the functioning of the grand jury of this district; on the further ground that various witnesses for whom subpoenæes have been issued for appearance before said grand jury have been following a common course of conduct in avoiding service and impeding the functioning of said grand jury.”

We call your Honor's attention to Mr. Carter's statement at page 35, in connection with one of the

questions concerning Dorothy Healy, beginning with the words:

“ ‘Q. We have had a subpoena out for Dorothy Healy. Do you know where she can be located or can be found?’ ”

This is a question which is put to the witness Blair.

Now it is our understanding that under old 18 USCA Sections 241 and 242 and new 18 USC Section 1501 and 1503, the deliberate evasion of the court process is a crime, that joint or common knowledge undertaken pursuant to a common plan would constitute a conspiracy to that end, and that would be a crime. We therefore point out to your Honor that any questions in connection with these witnesses that they are called upon to answer which tie them in to Dorothy Healy or this Mrs. Houdek are questions, answers to which might [100] incriminate the witnesses under those sections, and that the United States Attorney has reached this conclusion on the basis of whatever information he may have. Certainly there is a very reasonably warm pursuit and fresh scent with reference to anybody who can be identified or tied in with those two people.

In this connection we call the court's attention particularly to the case of *United States v. Cusson*, reported in 132 F. (2d) 413.

The Court: That is the one you have heretofore cited?

Mr. McTernan: Which I have called to your Honor's attention a number of times before, but it is specifically relevant and material on this particular point because it involved a similar situation, and

there the showing was even much weaker than it is here because there was no showing that this Cusson woman, who was afraid she might be incriminated under this same provision of the law, there was no showing that she had actually been subpoenaed. But still there was a possibility of a conspiracy to obstruct justice by evading process.

There are also questions, if your Honor please, with reference to Elizabeth Glenn in the government's motion. With reference to Elizabeth Glenn, I take it that you will stipulate, as you did before, Mr. Carter, that you will not object to the lack of foundation and the failure to call the [101] Honorable Jack B. Tenney, Senator of the State Legislature, to identify the Third Report of the Un-American Activities in California, dated 1947?

Mr. Carter: Third or fourth?

Mr. McTernan: Third.

(Exhibiting document to counsel.)

Mr. Carter: I will stipulate that the document you have handed me is a report made by Mr. Tenney, reserving my rights to object to the materiality of this material.

Mr. McTernan: Yes.

We offer the following excerpt from the report to which I have just referred, concerning which counsel has stipulated, appearing at pages 34 and 35.

The subheading is: "The Communist Party in Los Angeles County."

"The committee had endeavored for several years to subpoena Elizabeth Leech Glenn, an allegedly important Communist Party functionary in Los An-

geles County. The committee had known for some time that Mrs. Glenn was entrusted with the financial affairs of the party in Los Angeles County. After considerable difficulty a process server for the committee was successful in serving Mrs. Glenn while she was engaged in conversation with the operator of the Lincoln Book Store in Hollywood. [102] The Lincoln Book Store, incidentally, is the Hollywood center for the dissemination of Communist Party literature.

“Mrs. Glenn duly appeared before the committee at its Los Angeles public hearing in October, 1946. She testified that she was in full charge of the financial affairs of the Communist Party of Los Angeles County. She stated that she had been affiliated with the Northwest Section of the Communist Party for several years and that, in addition, she was a member of the Elizabeth Gurley Flynn Club, the Hollywood section of the Communist Party. The Northwest Section was described as comprising the area including and surrounding Hollywood.

“She testified that she received monthly dues from all of the Communists in her jurisdiction and that these dues constituted a considerable portion of the party’s revenue. She stated that the party was largely financed through collections and donations made at forums, lectures, social affairs, etc. It was her duty to forward 50 per cent of the membership dues to the national office of the Communist Party in New York. The state office of the party in San Francisco received 15 per cent and the county organization retained 15 per cent while the [103] sections of the

party within her jurisdiction retained 10 per cent, and 10 per cent went to the clubs.”

The Court: You are offering—

Mr. McTernan: That excerpt, your Honor.

Mr. Carter: I assume, and if I may inquire, that counsel vouches for the evidence he offers before this court. In offering this before the court I assume he vouches for the facts as contained in that report.

Mr. McTernan: I have repeatedly stated to the court that I do not vouch for the report from which I have read, nor for the methods which were used in compiling the information. I think that the fact that such a report can be made in the United States is a sad reflection upon the state of our constitutional guarantees, and it shows that this kind of a thing conducted before committees of this kind, as well as grand juries, it shows the peril in which people are when they espouse an unpopular political belief or can be tied in with people who espouse unpopular political beliefs.

Furthermore, I am confident, if the court please, that Mr. Carter and his FBI agents and the grand jury, which he is manipulating to this unconstitutional end, is in a far better position to vouch for the accuracy of such information than I am.

Mr. Carter: May the court strike the words from Mr. [104] McTernan's statement, "the grand jury which Mr. Carter is manipulating to the unconstitutional ends."

The Court: I cannot strike it. He has made it.

Mr. Carter: Let's get down to a realm of advocacy and not make statements like that.

The Court: Yes, it is going a little beyond it. It

is using it as a sounding board for making conversation which is being reported and repeated. I am conscious of that.

Mr. McTernan: That is what is being done by the grand jury and by Mr. Carter, as I have repeatedly stated to the court.

Mr. Carter: Since Mr. McTernan can't vouch for this statement I of course can't stipulate, and I object to its admissibility on the ground that it is hearsay. It is an *ex parte* report. Mr. McTernan has no doubt better evidence available than what he has offered. I object on the ground it is incompetent, irrelevant and immaterial.

The Court: I do not quite get the basis of your offer, Mr. McTernan. What are you offering it for? As a matter of common knowledge or as a matter of which the court can take judicial notice, it being a public document, or the fact that the report was made by Mr. Tenney or the fact that it was made on that date or what? What is the basis of your offer?

Mr. McTernan: I am offering this, your Honor, to show that there is at least sufficient factual information available [105] to an official body, namely, the California Legislative Committee on Un-American Activities, to justify it in reaching the conclusions which have been stated, and thereby to indicate the peril to which people who could be tied in to Elizabeth Glenn would run by way of possible indictment by the Department of Justice and grand juries to whom the Department of Justice presents such matters under the Smith Act.

The Court: If I understand you correctly, your statement concerning this report is that you vouch

for nothing in it, nor the means by which the information therein secured was obtained? You not only do not vouch for it but you condemn it, is that right, as useless, as worthless, and as unconstitutional? Is that correct?

Mr. McTernan: I condemn the report, your Honor, as the exercise of illegal and unconstitutional powers by a governmental authority.

The Court: Then do you vouch for the accuracy of this statement?

Mr. McTernan: I do not vouch for the factual statements because I don't know of my own knowledge.

The Court: Do you vouch for them?

Mr. McTernan: I cannot vouch for them.

The Court: You cannot vouch for them?

Mr. McTernan: For the reasons I have already stated. [106]

The Court: Then you are offering as evidence here something which you condemn?

Mr. McTernan: I would not vouch for this any more than I might vouch for a jury's verdict in a case in which I lost. I could agree with the jury and not agree with their conclusions to be reached from the facts, but the fact that they did reach a certain judgment—

The Court: Then it amounts to nothing more nor less than that somebody said someplace—the fact that it happened to be Mr. Tenney, the fact that it happened to be put in a publication is immaterial—but that somebody said someplace that Mrs. Glenn was the treasurer of the Northwest Section of the Los Angeles County Communist Party, and that she

forwarded 50 per cent to New York and kept so-and-so?

Mr. McTernan: I think it shows that not only this official committee took evidence from which it reached these conclusions, but it also shows part of this picture of official interference and intimidation.

The Court: You mean there is some connection?

Mr. McTernan: Between the Communist Party and the attempt to build up this illusion of illegality about the Communist Party, which lays the basis for this claim of privilege; that people now run a substantial risk of being declared criminals who have been identified with the Communist Party.

The Court: In other words, if they disclose to the Federal grand jury they run the risk of being claimed to be a criminal by Mr. Tenney?

Mr. McTernan: No, your Honor.

The Court: Let us stick to the proposition.

Mr. McTernan: I think your Honor has misstated what I am trying to say.

The Court: I am trying to understand the basis of your offer. This is the way it looks to me now—I may have misunderstood you—it looks to me like you are offering something which you condemn, which you think is worthless, which you probably think is untrue, and are offering it here as evidence in court, but nevertheless the grand jury and the United States Attorney and I must take it as true. That is the way it looks.

Mr. McTernan: Well, your Honor, I simply submit to you, with all due respect, that you have completely misstated what I have said to the court and

that this is somehow twisting me into some kind of a corner.

The Court: I am merely trying to state it.

Mr. McTernan: Your Honor is familiar with such cases, for example, as *United States v. Weisman*—

The Court: Yes, and also the *Zwillman* case.

Mr. McTernan: May I be allowed to finish my statement in order to explain to you what I am trying to do here this [108] morning?

The Court: Surely.

Mr. McTernan: There the court permitted a witness to testify as to what was rumored in the community about him in order to show his peril. He was permitted to show what was said in a newspaper in order to show the peril to him.

Now, what I am trying to do is to show to you what the legislative committee of the State of California has done and said about these people who were involved in this thing in order to show you that there is some possibility of peril. I am not required, and these witnesses are not required, to prove to you in the form of normally admissible evidence in a court of law that the facts actually are that they are members of the Communist Party or that they are actually are such kinds of persons that an indictment could be had against them. If they were required to do that the privilege would be meaningless because in order to save themselves they would have to condemn themselves.

What we are trying to show here is the danger, the gravity of the danger. We are showing to you that a legislative committee of the State of California

has taken facts, has made findings and has reported on them. These are simply in order to show the nature of the risk.

Whether these facts are true doesn't make any difference, because if they were forced, as I said before, to [109] prove the truth of these facts they would have to prove the very thing that they are claiming they shouldn't be required to disclose.

So all we are trying to do is to show you that there are apparent facts in existence—

The Court: Or rumors?

Mr. McTernan: —which, if true—

The Court: Or rumors of facts?

Mr. McTernan: I think you would be justified in treating this report as more than a rumor. I think that Mr. Carter and his FBI men treat them as more than rumors. They apparently are willing to use this kind of stuff in order to call grand juries together and have their lives prolonged, and so forth and so on, in order to harass these people.

Now, all we need to show to you is that these facts are talked about and are reported and therefore there may be a reasonable risk, and if there may be a reasonable risk, you have to deny the motion.

The Court: That is the sole basis upon which you offer it then?

Mr. McTernan: That is correct.

The Court: Why did you not say so in the first place?

Mr. McTernan: I tried to say it four times and your Honor tried to repeat it four times and said it differently from what I stated because I understood your Honor was [110] saying and therefore

it was necessary to say it over and over again. I hope that now we can reach agreement at least as to what I said.

The Court: The record will show what you said.

Mr. McTernan: I repeat my offer.

The Court: It will be admitted.

Mr. McTernan: For the same purpose, your Honor, we offer an excerpt from page 23 of the same report, under the subheading: "Dorothy Healy on 'Browderism.' "

"The committee subpoenaed Dorothy Healy (formerly Dorothy Ray) at its Los Angeles hearing, January 2, 1946. Since Mrs. Healy was, at the time of the hearing, secretary of the Communist Party of Los Angeles County, and had been a delegate to the National Convention of the Communist Party of the United States in New York at which the Browder changes were adopted, her testimony is most illuminating."

That is the end of the excerpt.

The Court: Admitted.

Mr. McTernan: For the same purpose, your Honor, we offer an excerpt from page 222 of the 1948 report of the same committee—

The Court: What was the other report?

Mr. McTernan: 1947. The title is "Third Report, Un-American [111] Activities in California, 1947." It was from that report that I read the two excerpts which are now in the record.

The next report is entitled, "Fourth Report, Un-American Activities in California, 1948," with a subheading, "Communist Front Organizations."

Mr. Carter: I have not objected to the admis-

sion of the first extract and I didn't get my objection in to the admission of the extract on Dorothy Healy. I would like the record to show that we have the same objection to the admissibility of the extract just read concerning Dorothy Healy that we had to the first extract.

The Court: The objection is overruled. It is offered in evidence as a rumor or a statement or whatever it is.

Mr. McTernan: As your Honor has already pointed out, the record will show what I claim it to be so I don't feel it is necessary to comment on your Honor's use of the word "rumor," by way of disengaging myself from the agreement with your Honor's description.

We offer now, your Honor, as I said from the 1948 report, an excerpt beginning at page 222 and extending over to page 223 as follows:

"Frank Spector was subpoenaed and appeared before the committee in Los Angeles on Wednesday, February 18, 1948. He stated that he was born in [112] Russia and that he is an alien. He has lived in California since 1920, off and on. He was in the East for some time and returned to Southern California in 1942. Spector would not admit acquaintance with V. A. K. Tashjian, alias Parker, former control commissioner of the Communist Party for Southern California. Likewise he refused to answer questions concerning his official position in the Communist Party. (It is known that he is the present control commissioner for the party. This position is a most powerful one

within the Communist Party organizational structure as it deals with disciplinary measures——”

The Court: Who is “he,” Tashjian or Spector?

Mr. McTernan: That is Spector. I gather from the context that the “he” refers to Spector.

The sentence says: “Spector would not admit acquaintance with V. A. K. Tashjian, alias Parker, former control commissioner of the Communist Party for Southern California. Likewise he refused to answer questions concerning his official position in the Communist Party.” And then it goes on with “he,” so I think it refers to Spector.

Beginning with the parentheses:

“(It is known that he is the present control commissioner for the party. This position is a [113] most powerful one within the Communist Party organizational structure as it deals with disciplinary measures for recalcitrant party members.) Spector, however, defiantly admitted that he was a member of the Communist Party.”

Mr. Carter: I take it that the same record as to your vouching for this statement will be the same as to the previous excerpt that you read?

Mr. McTernan: I make the same statement with reference to vouching for this report and for Mr. Tenney’s works as I have made with reference to the 1947 report. And I offer this excerpt for the same purpose that I stated to the court I offered the excerpt from the 1947 report.

Mr. Carter: Objected to on the ground it is

hearsay, no bearing upon the issues of the case, incompetent, irrelevant and immaterial.

The Court: It is hearsay but it is admitted. [114]

* * * *

Mr. McTernan: I submit to the court that the questions, "Do you know any person in Los Angeles County who advocates the overthrow of the government of the United States by force and violence," and the question, "Do you know any organization whose purpose it is to advocate the overthrow of the government of the United States by force and violence," raise substantially the same problems in so far as the privilege against self-incrimination is concerned, and the other constitutional objections which we have heretofore urged with reference to questions which tie the witnesses in with the Communist Party, and we submit nothing new or different in that connection but simply advise the court that we urge the same grounds, simply pointing out, as we see it, the legal question is much simpler since now the government is using the language of the criminal statute and an answer to these questions might very well tie these witnesses in with an organization or a person who is engaged in an unlawful activity in the language used by the statute itself.

The Court: If these persons have a right to refuse to answer those questions, every person has a right then to refuse to answer the question whether or not they know any person who advocates the overthrow of the government by force and violence.

Mr. McTernan: Well, I am not prepared to take so broad a position at this point. Any witness whose answer might tend to tie him in with such a group

would have the same right to refuse to answer that question as a witness before the New York grand jury had the right to refuse to answer a question as to his business associates, or that this witness Cusson had to refuse to answer questions concerning a meeting.

The Court: Then the basis of this is possibly these people do know somebody who might advocate the overthrow of the government by force and violence, so in that case the statute would be meaningless and the government of the United States, which is created by a Constitution, sowed its own seeds for its complete destruction by tying the hands of anybody who inquired into whether or not anybody wanted to overthrow it.

Mr. McTernan: The hands of the government are tied under the Fifth Amendment as to any witness regardless of his political beliefs where the government desires to get an answer on which a prosecution may be based.

The Court: Is that a political belief?

Mr. McTernan: Sir?

The Court: Is that a political belief, to overthrow the government by force and violence?

Mr. McTernan: I am not here to argue that question, your Honor, because that is not what is involved.

The Court: You just stated it was a political belief and my question is—

Mr. McTernan: I did not so state it was a political belief, and I don't think that that question is involved here, and I don't think that the argument of it is necessary for the determination of this case.

The Court: I see.

* * * *

Mr. McTernan: Now we have never stated in this courtroom that the Communist Party advocates the overthrow of the government by force and violence, but we have stated, that we have tried to prove and we have been prevented from proving by the rulings of this court, that it is the official position of the United States government that the Communist Party so advocates and therefore that a witness is privileged—

The Court: Just a moment, counsel. You say you have tried to prove and you have been prevented from proving. You have made certain offers of proof which I held were immaterial. You have made certain other offers of proof which I held were hearsay. You have been given an opportunity in these proceedings of going on for some time, and since the beginning of these proceedings you have stated that you were going to prove that the official position of the government of the United States was that as you are trying to say now.

* * * *

Mr. McTernan: The same reasoning applies to the question which was put to the witness Spector, "You have publicly stated," etc., "that you were a member of the Communist Party." This is asking the witness to admit membership in the Communist Party. And there all of the reasoning which has been urged to your Honor, not only this morning but at the other numerous times in the course of these proceedings, also applies.

The Court: I will say right now, as to that question I think it is immaterial to the inquiry,

whether or not Frank Spector stated on innumerable occasions that he was a member of the Communist Party.

Mr. McTernan: May I be excused just a moment?

* * * *

Mr. McTernan: Your Honor, we have now submitted to the court all of the matters which we care to offer by way of opposition to the government's motion. In view of the fact that the law has been argued at length and the contentions which we make are fully familiar to your Honor, I think it unnecessary to offer argument.

You have in addition to everything else which has been offered to you a copy of our brief on appeal to the Court of Appeals of the Ninth Circuit?

The Court: Yes.

Mr. McTernan: Which summarizes our position on all the points about as well as we could do it. Therefore, in the interests of time, unless the court desires clarification on certain of the items of evidence or certain of the legal points which we have urged, we will not offer anything more at this time.

The Court: Do you have anything further or offer, Mr. Carter?

Mr. Carter: Nothing further.

I would suggest, however, that if your Honor makes an order that some of these questions be answered, that probably a written order would be prepared so that we may get the exact wording of each question. If that will be of some assistance, I will be glad to do that.

The Court: In so far as the questions which

were asked of the other witnesses, the additional reasons this morning, if any additional reasons were offered, I do not think changes the complexion of the situation or indicates that [124] the objection of the witnesses to answer the questions on the ground it might incriminate themselves is well taken.

I have already ruled on this question, No. 12, in the table submitted, that it is immaterial. That was asked only of Frank Spector.

I am wondering whether or not, in connection with the inquiry that is made, that is, to wit, an inquiry to determine whether or not certain parties, employees of the United States of America, have made false statements or, as Mr. Carter has stated on page 34 of the transcript, "one of the issues involved is whether or not they were members of the Communist Party of Los Angeles County," in view of that whether question No. 10 is material. One witness answered it. The witness Spector answered it.

What is your position on that, Mr. Carter, the materiality of question No. 10 to this inquiry? I think No. 11 is material, do you know any organization. I think perhaps No. 10 is material.

Go ahead.

Mr. Carter: One thing I have in mind is this, it just poses the question of how far these witnesses will go in refusing to answer questions. As your Honor pointed out, if a witness can refuse to answer that question, based upon his claim of privilege under the Constitution, then you are al-

lowing the Constitution to be the very sword by which it [125] could be struck down.

The Court: If it is immaterial it does not make any difference.

Mr. Carter: Yes, that is true on that, but it was a general question as to any person. It is more than that, it is a preliminary question.

The Court: Of course they are not objecting to that on the ground of its materiality.

Mr. Carter: It is a preliminary question which would thereafter be followed up possibly by reference to some particular name.

The Court: Yes, I think so. I do not see any reason for changing the ruling I have heretofore made. All of these questions, under the *In Re Willis* case, decided by Justice Marshall, are the same nature and type, "do you know," "do you know," "do you know," "do you know any person," "do you know any organization," "do you know Dorothy Healy"—the one question, "Who are you an organizer for" takes it out of the "do you know" category—but I cannot see that that could possibly incriminate anybody.

It is unnecessary for me to say any more than I have heretofore said in connection with the other rulings. The order will be on the witnesses to answer the questions. [126]

* * * *

The Court: Yes.

Mr. Spector, come over to the lectern.

You are now ordered and directed to be and appear before the Federal grand jury of this district

in its office in the Federal Building on the sixth floor on March 3rd at 9:30 o'clock in the morning of that day and make answer to the following questions:

"Q. Do you know the official organization of the Communist Party of Los Angeles County?"

"Q. Do you know Dorothy Healy?"

"Q. Do you know where she can be found or [127] located?"

"Q. Do you know her business or home address?"

"Q. Do you know her husband's name?"

"Q. Do you know her husband's occupation?"

"Q. Do you know Dorothy Healy's occupation?"

"Q. Do you know any organization in this community which has for its purpose the overthrow of the government by force and violence?"

Mr. Carter: Mr. Spector answered that question.

The Court: Yes, he did. He subsequently answered it.

Mr. Carter: Yes.

The Court: "Q. Do you know whether or not Dorothy Healy is married?"

Do you understand the order of the court?

Mr. Spector: Yes, sir.

The Court: Very well. You may stand aside.

Mr. Caress, you are ordered and directed to be and appear before the grand jury of this district in its office in the Federal Building on Thursday, March 3rd, at 9:30 o'clock in the morning of that

day, and at that time and place to answer the following questions:

"Q. Can you tell us the table of organization of the Communist Party of Los Angeles County?"

"Q. Do you know who in the Los Angeles [128] County Communist Party setup has knowledge of or is in charge of membership?"

I take it, Mr. McTernan, that you are checking these?

Mr. McTernan: Yes, I am.

The Court: As against the transcript?

Mr. McTernan: Yes, I am.

The Court: "Q. Do you know Dorothy Healy?"

"Q. Do you know where she lives?"

"Q. Do you know where she can be found or located?"

"Q. Do you know her husband's name?"

"Q. Do you know his occupation?"

"Q. Do you know any person in this community who advocates the overthrow of the government of the United States by force and violence?"

Mr. Carter: I think the word was "county," "anyone in this county."

The Court: "* * * any person in this county who advocates the overthrow of the government of the United States by force and violence?"

"Q. Do you know any organization in this county which has as its purpose the overthrow of the government by force and violence?"

Do you understand the order?

Mr. Caress: Yes, sir. [129]

The Court: Very well.

Mr. Brodsky: You are now ordered and directed to be and appear before the grand jury of this district at its place of meeting on the sixth floor of this building on Thursday, March 3rd, at 9:30 o'clock in the morning of that day, and then and there make answer to the following questions:

“Q. Do you know and can you tell us the table of organization of the Communist Party of Los Angeles County?”

“Q. Do you know who, in the Communist Party in Los Angeles County, is in charge of membership or membership rolls?”

“Q. Do you know Dorothy Healy?”

“Q. Do you know what her business or residence address is, or where she can be located?”

“Q. Do you know her husband's name?”

Mr. McTernan: Did your Honor skip one, line 7?

The Court: No, that is the same. It is included in the same question.

Mr. Carter: No.

The Court: Questions 4 and 5 are the same.

Mr. McTernan: I don't think so, your Honor.

The Court: Very well. The last one was: “Do you know what her business or residence address is, or where she can be located?” All three of those are in one question. That [130] is No. 4 and No. 5 in the table. The next question is No. 6.

Mr. McTernan: At page 14, line 7, there is a question, “Do you know what her business or occupation is?”

Mr. Carter: The questions on the chart are out of order, Mr. McTernan. That comes later.

Mr. McTernan: I see.

The Court: "Q. Do you know her husband's name?"

"Q. Do you know his (her husband's) business or occupation?"

"Q. Do you know what her business or occupation is?"

"Q. Do you know any person in the County of Los Angeles who advocates the overthrow of the government of the United States by force and violence?"

"Q. Do you know any organization in the County of Los Angeles that has for its purpose the overthrow of the United States government by force and violence?"

"Q. Who are you an organizer for?"

Do you understand the order of the court?

Mr. Brodsky: I do.

The Court: Very well.

Mr. Blair. You are ordered and directed, Mr. Blair, to be and appear before the Federal grand jury of this district [131] in its office on the sixth floor of this building on March 3rd at the hour of 9:30 o'clock in the morning of that day and then and there make answers to the following questions:

"Q. Do you know the table of organization, or who the officials of the Communist Party of Los Angeles County are?"

"Q. Do you know who are what officer of the Communist Party of Los Angeles County is in

charge of membership, or has knowledge of the membership rolls in this county?"

"Q. Do you know Dorothy Healy?"

"Q. Do you know where she can be located or can be found?"

"Q. Do you know her business or home address?"

"Q. Do you know her business or occupation?"

"Q. Do you know what her husband's name is?"

"Q. Do you know his occupation, her husband's occupation?"

"Q. Have you seen Dorothy Healy recently?"

"Q. Do you know any person in the County of Los Angeles who advocates the overthrow of the government of the United States by force and violence?"

"Q. Do you know any organization in the County of Los Angeles which has the announced [132] purpose of the overthrow of the government of the United States by force and violence?"

"Q. Do you know Elizabeth Glenn?"

"Q. Do you know Mrs. Houdek?"

Do you understand the order of the court?

* * * *

Mr. McTernan: Your Honor, I have a matter in connection with Irving Caress. It is a request, if your Honor please, for an order permitting Mr. Caress to leave the district on business. The facts are stated in the affidavit of Louis Chatoff.

The Court: He is ordered to be here on March 3rd. How can he be here on March 3rd and in New York on March 7th?

Mr. McTernan: Assuming that he is released to do this, he will fly to New York.

The Court: He is seeking permission of the court to leave the district during the period between February 27 and March 25. I have just ordered him to be before the grand jury on March 3rd.

Mr. McTernan: This was framed this morning before this proceeding took place and we understood then that all witnesses—we had a stipulation from Mr. Carter that all witnesses—would simply be subject to call before the grand jury, and we didn't know the specific date was going to be fixed. I take it that Mr. Caress can appear here on March 3rd and still get to New York on time, assuming that the planes can get through.

Mr. Caress is engaged in a small business, it is not a large enterprise, and their ability to stay in business depends upon their ability to send a representative back to this fair and to engage in a rather complex process of demonstrating and selling their product and obtaining orders so that the company may continue in business.

The Court: I am agreeable to letting him leave the district but I think it ought to be consonant with the time that the grand jury members are coming down here, who are also away from their business.

Is there any objection to this, Mr. Carter?

Mr. Carter: No objection if it doesn't interfere with the business of the grand jury. The matter is set on the 3rd. He is still under bond. I have no objection to him leaving the district.

Of course he is merely reaping some of the fruits of what his own misconduct was in running out on

the subpoena. He is one of the men that we had a bench warrant out for. Had he not been on the run then this situation would not have developed. It just happens now that he had delayed the business of the court until it now interferes with his own business. I can't feel too sorry for him, but if he is around on March 3rd I will have no objection to him leaving the district.

The Court: I will indicate now that I will make an order, but I will wait fixing the time that he may leave until after the proceedings on March 3rd. In other words, you may renew this motion on March 3rd, and I anticipate that he will be permitted to leave. Of course if he testifies he can go anyhow, he is through, he can be released and his bond exonerated. If he does not, I do not know what will eventuate, but at that time I will entertain a motion again, and indicate now that it will be my intention to grant it for a reasonable time.

* * * *

[Endorsed]: Filed April 6, 1949. [133]

